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LEGAL ASSISTANCE GUIDE:
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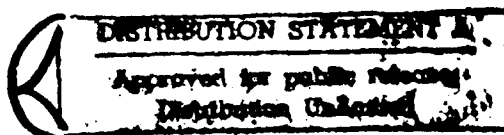
LEGAL ASSISTANCE GUIDE:
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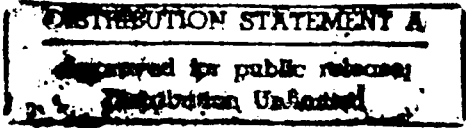
LEGAL ASSISTANCE GUIDE:
SOLDIERS' AND SAILORS'
CIVIL RELIEF ACT

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Legal Assistance Branch
Administrative and Civil Law Division
The Judge Advocate General's School
United States Army
Charlottesville, Virginia

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FOREWORD

This volume is part of a series of Legal Assistance Guides designed to provide the legal assistance attorney with guidance and samples of the forms and letters most commonly needed in serving legal assistance clients. The series will eventually include the following individual titles.

- Legal Assistance Office Administration Guide
- Legal Assistance Deployment Guide
- Legal Assistance Consumer Law Guide
- Legal Assistance Family Law Guide
- Legal Assistance Notarial Guide
- Legal Assistance Real Property Guide
- Legal Assistance Soldiers' and Sailors' Civil Relief Act Guide
- Legal Assistance Wills Guide

These publications provide summaries of the law, guidance, and sample documents for handling common problems. The sample documents are intended to be guides only; they are neither prescribed for use in the field nor intended to exemplify the best legal drafting in every circumstance. Legal assistance attorneys should ensure that the samples in this book are adapted to local circumstances and are consistent with current format provisions in Army Reg. 340-15 prior to reproduction and use.

While forms can save time for both attorneys and clerk-typists, indiscriminate use of such forms is inherently dangerous. Standard form language may not be fully appropriate for the particular client's situation. Also, the use of a form detracts from the personalized, individual service attorneys strive to give their clients. Nonetheless, the careful, selective use and editing of forms can enhance an attorney's service to clients by reducing document-drafting time and helping remind the attorney of important requirements in drafting legal documents.

The series is part of the continuing effort to improve and expand the resources available to legal assistance practitioners. To help us better serve you, please send your comments and suggestions to The Judge Advocate General's School, ATTN: JAGS-ADA-LA, Charlottesville, Virginia 22903-1781.

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PREFACE

This book is designed to provide legal assistance attorneys with a synopsis of the basic principles of wills and estate planning and a single volume reference to the will and intestacy laws of the 50 states, District of Columbia, Guam, Puerto Rico and the Virgin Islands. Chapters 1 and 2 are an overview of the law concerning wills, intestate succession, and estate planning. Chapter 3 contains sample will provisions as references for preparation and drafting of wills, as well as sample trust provisions which are designed to provide for the care of minors upon death of the parents. These provisions are not designed to maximize estate or income tax benefits which might be available. The sample will clauses in Chapter 3 have also been expanded to include such provisions as living wills, anatomical gifts, and others. Chapter 4 provides summaries of state and territorial will and intestacy statutes. It includes recently adopted statutory wills for the states of California Maine and Wisconsin. In addition there is expanded coverage for most states based on input received from Reserve Component attorneys licensed to practice in those states, who serve on the Reserve-Guard Judge Advocate Legal Assistance Advisory Committee. The section on Puerto Rico has been expanded to include a simple holographic will in both a Spanish and English translation which can be used for clients from that jurisdiction. Chapter five contains an overview of living wills. Nine appendices follow the chapter on living wills giving breakdowns of age requirements, types of wills, attestation requirements, fiduciary requirements, state living will statutes, state death and gift taxes, and adoption of the Uniform Gifts to Minors Act. Several forms designed to be distributed to legal assistance clients have been added to the Guide. Appendix E contains a will drafting checklist. A number of forms and hand-books pertaining to estate planning clients is at Appendix F. Appendices G, H, and I contain living will forms, a form for a durable power of attorney for health care, and a summary of state living will legislation.

Legal assistance attorneys are advised that these state and territorial statutes are subject to amendment by legislatures and interpretation by courts. Therefore, additional research and verifications may be required. Legal assistance attorneys are also advised that the sample will provisions in Chapter 3 are presented to aid in the preparation of wills. These forms should not be used in whole or in part without a thorough understanding

of the purpose of each provision. A bibliography of additional references and form books is listed in the appendices. This text does not purport to promulgate Department of the Army policy or to be directory in any sense.

The Legal Assistance Wills Guide is updated periodically by The Judge Advocate General's School, U.S. Army, with the assistance of the Reserve-Guard Legal Assistance Advisory Committee. Revisions will be forwarded to Legal Assistance Officers as published. To insure the continued usefulness and accuracy of this book, all judge advocates and legal assistance officers are asked to notify the School of any changes in these state and territorial statutes. This information should be addressed to The Judge Advocate General's School, ATTN: JAGS-ADA-LA, Charlottesville, Virginia 22903-1781.

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CHAPTER 1

INTESTACY AND WILLS

I. INTESTACY

A. GENERALLY

Intestacy is usually the result of an absence of estate planning. A person who dies without a will is considered to have died intestate. The distribution of estates of intestate decedents is a matter for state regulation. State law directs the distribution of the decedent's property to his or her heirs and, in effect, writes the will the decedent failed to make.

Each state has its own particular statutes and judicial decisions in this area. These laws and decisions establish general principles regarding the disposition of property, guardianship of children, rights of relatives, and rules as to how estates are managed and who manages them.

The laws in question are determined by the state in which the decedent had his domicile and the states where any real property is located. These laws vary and consequently the law of the appropriate state must be consulted.

B. DESCENT AND DISTRIBUTION

At common law a distinction was drawn between the descent of property and the distribution of property. The term descent usually applied to real property passing to the heirs of the deceased. Distribution usually applied to personal property which passed to the next of kin. This distinction has been largely eliminated in this country and realty and personalty are handled alike.

Many clients believe that a surviving spouse automatically inherits the decedent's entire estate when there is no will. In most states this is not true. If there are surviving children, the spouse inherits only a portion of the estate. This portion may be expressed as a percentage of the intestate estate, or as a fixed sum plus a percentage share of the balance. The surviving children receive the remainder of the estate and share equally. Issue of a deceased child inherit the share their parent would have received if the parent survived. Descendants, however remote, take in preference to other blood relatives.

In most states, parents take in the absence of descendants, subject to the share of the surviving spouse. Brothers and sisters take next after parents,

though in some states they share with parents. Nephews and nieces are permitted to take the share of their predeceased parent if other brothers and sisters survive, but if nephews and nieces are the sole survivors they usually take equally. The appropriate statutes must be consulted to determine the percentages and priorities among surviving relatives.

If none of the specified relatives survives the intestate, the property passes to the decedent's next of kin. The modern approach, as reflected in the Uniform Probate Code adopted in a minority of states, limits next of kin to collateral relatives who are lineal descendants of the decedent's grandparents. In the absence of any next of kin, the intestate estate passes to the governing state.

Next of kin may be determined according to the civil law or common law rule. Under the traditional civil law approach, the degree of relationship is determined by counting the number of steps from the claimant to the closest common ancestor and then adding the number of steps from this common ancestor to the intestate. The sum of these two counts is the degree of relationship of the claimant to the intestate. If the claimant is related in the lowest degree he takes as next of kin. If several claimants are related in equal degree they are all next of kin and share equally.

A few statutes expressly declare that the computation shall be by the common law method. This method establishes the degree of relationship as the number of steps in the longer of the two lines from the common ancestor to the intestate and to the claimant, instead of the sum of both.

C. ADMINISTRATION EXPENSES

The cost of administering an estate may be significantly greater when there is no will. The administrator (administratrix, if female) of an estate will generally be required to post bond with surety. In the absence of a will the actions of an administrator will be restricted and judicial authorization may be required before he can effectively act. Proceedings requiring court approval are paid for by the estate.

D. DOWER AND CURTESY

At common law the surviving spouse had a right of dower or curtesy in the real property of the deceased spouse. Under present state law, the rights of dower and curtesy have been abolished or modified drastically. The laws of the states in which the decedent was domiciled

and owned real property must be consulted in order to determine the full rights of the surviving spouse.

The rights of surviving spouses differ in community property jurisdictions. Although the disposition of community property varies somewhat in different states, the surviving spouse generally receives at least one-half of the community property. Property owned prior to marriage or received by gift or inheritance during marriage is not considered to be community property. The law of descent and distribution in community property jurisdictions provides different rules for community property and separate property. Moreover, community property acquired while the spouses reside in one jurisdiction is not converted into separate property merely by a change in domicile. Great care must be exercised in advising clients who have resided in community property states at any time while married.

II. WILLS

A. BASIC REQUIREMENTS

Each state has statutes which establish the requirements for a valid will. Generally, execution of a valid will requires that the testator (testatrix, if female) be a minimum age and possess testamentary capacity. In most states, the minimum age is eighteen. Some states permit an individual below the minimum age to execute a will if the person is married or in the military. The testator also must be of sound mind at the time the will is executed. Sound mind requires that the testator:

1. Know that he or she is executing a will;
2. Know the general nature and extent of his or her property; and
3. Know his descendants or other relatives that would ordinarily be expected to share in the estate.

The will's format must conform to the standards prescribed under state law. Most states require that a will be written or typed, signed by the testator, and attested by two or three witnesses. Specific state requirements are set forth in Chapter 4 of this text.

B. INTERESTED WITNESS

An interested witness is one who attests the execution of a will in which he or she is named as a beneficiary. The effect of an interested witness depends on state law. The will is not invalidated in most jurisdictions, but the beneficial provision to the interested witness may be void. If the witness would be entitled to an intestate share, the witness normally

would be entitled to receive the smaller of the share stated in the will or the intestate share.

C. TYPES OF WILLS

There are four types of wills - statutory wills, holographic wills, nuncupative (oral) wills, and soldiers' and seamen's wills.

1. Statutory Will - A statutory will complies with the usual statutory requirements for a will. In most jurisdictions, the will must be written or typed, signed by the testator, and formally subscribed by two or three witnesses. A recent development in this area is the statutory form will. Three states--California, Wisconsin and Maine--now have these types of wills. The statutory forms for those states are included in the state law summaries in Chapter 4.

2. Holographic Will - A holographic will is one wholly in the handwriting of the testator and signed. In some states only the material provisions and signature must be handwritten. It requires no witnesses and usually does not require a date. The will does not need specific testamentary language, but generally must evidence testamentary intent.

3. Nuncupative (Oral) Will - A nuncupative will is an oral will. Many jurisdictions do not recognize unwritten wills. Where recognized, oral wills are usually limited to when the testator is in military service or when death is imminent at the time of the declaration.

4. Soldiers' and Seamen's Will - Some states permit individuals in actual service in the Armed Forces to dispose of their wages and personal property by oral will or other informal writing. This type of will is often limited to servicemembers performing duty in an enemy country during war, but some states do not require formal hostilities. This type of will ordinarily ceases to be valid after a specified time.

D. FIDUCIARY REQUIREMENTS

A fiduciary is an individual appointed to take care of another individual's property or person. Four types of fiduciaries - executors, trustees, custodians, and guardians - are commonly appointed by will.

The executor is responsible for administering the testator's probate estate. This process includes probate of the will, marshalling the estate assets, payment of the decedent's debts, taxes and other estate liabilities,

and distribution of the remaining assets to the beneficiaries in accordance with the terms of the will.

State law may require the executor (or one of the co-executors) to be a resident of that state, but exceptions apply in many cases for close relatives of the testator. Many states require that individuals nominated as executors provide bond with surety at the time of appointment. The amount of the bond depends upon the value of the assets being administered. The testator can usually waive this requirement by express provision in the will. Although some states grant broad fiduciary powers to every executor as a matter of law, in most cases the executor's powers are limited to those set forth in the will or incorporated into the will by reference to an authorizing statute. In the absence of such powers, the executor may be required to seek court approval for certain actions in much the same way as an administrator appointed for an intestate estate.

The function of a testamentary trustee is usually considered to begin when the executor's role ends. The trustee appointed under the will receives a distribution from the estate in the same way as any other beneficiary. The trustee administers the assets in trust for the benefit of one or more individuals, such as the testator's children, who may be incapacitated or lack financial maturity. In some cases a trust is created under the will for reasons that have little to do with the ability of the beneficiary to properly invest and manage the inherited property. It is not unusual for the testator's surviving spouse to be both the beneficiary and sole trustee of a trust created for estate tax savings. State laws applicable to the appointment of testamentary trustees, the requirement of bond with surety, and the grant of trustee powers generally parallel those pertaining to executors.

A majority of states now permit a testamentary gift to be made to a custodian on behalf of a minor under the Uniform Transfers to Minors Act or a modified version of the Uniform Gifts to Minors Act. (See Appendix L). A custodianship is clearly superior to appointment of a guardian for purposes of administering relatively small sums on behalf of a minor child. The custodian may be named in the will or the testator may authorize the executor or trustee to select a suitable custodian. The custodian has broad fiduciary powers set forth by statute. The powers of a custodian under the Uniform Gifts to Minors Act are somewhat more restricted than under the Uniform Transfers to Minors Act. For example, a custodian under the UGMA cannot take title to real property unless the statute has been appropriately modified.

Guardianship may refer to the care and custody of the testator's children or to the administration of the children's property, or both. It is generally advisable

for the testator to include a provision in the will or other document designating a guardian or guardians of the person of any minor child who has no surviving parent. Whenever possible, this designation should be coordinated with the testator's spouse. Although the ultimate decision concerning custody of the child rests with the appropriate court, considerable weight is given to the wishes of the parents.

A guardian of the property of any minor children may also be appointed under the will. Because of the expense and inflexibility usually associated with guardianships, the testator should provide that property passing to a minor child be retained in trust or a custodial account.

E. REVOCATION

A will may can be revoked at any time. The best method to revoke a will is by executing a new will containing an express provision revoking all prior wills. Revocation also can be effected by executing a formal writing revoking a prior will or by physically destroying a will with an intent to revoke it. In many states a will may be wholly or partially revoked by operation of law due to a subsequent divorce, marriage, or birth.

F. SPOUSE'S RIGHT OF ELECTION

In most states neither spouse can disinherit the other. When a spouse fails to provide an adequate portion of the estate for the survivor, the surviving spouse can accept the property passing under the will or exercise the right of election. The right of election gives the survivor the opportunity to take a distributive share of the estate provided by statute. Most statutes require that the survivor exercise the right of election within a certain period of time after the date of death or initiation of probate proceedings.

G. SIMULTANEOUS DEATH

Most states have enacted statutes to govern the distribution of testate property when there is insufficient evidence to determine if a beneficiary survived the testator. The most common provision directs that the testator's property be distributed as if the beneficiary predeceased the testator. The testator can establish a different presumption of death by an appropriate provision in his will. In some instances the testator may require the beneficiary to survive for a certain period of time in order to receive a bequest. A "delay" clause of this type is often used to avoid occurs soon after that of the insured. A delay clause

that exceeds 180 days will disqualify a bequest to the spouse for the marital deduction.

When estate tax planning is an important consideration, it is common to provide that the spouse with the smaller estate is deemed to survive in the event of simultaneous death.

H. CHOICE OF LAW

Under common law, the validity of a will disposing of real property is determined by the law of the situs of the land and the validity of a will disposing of personalty is determined by the law of the decedent's domicile. Several states have modified the common law rule by recognizing a will for all purposes which has been executed in accordance with the law of the state where the will was executed, or the state of the testator's domicile at the time of execution.

I. SELF-PROVING PROVISION

A self-proving provision is a clause included at the end of the will or in an attached document containing the testator's acknowledgment and affidavits of the witnesses made before a person authorized to take acknowledgments and administer oaths. The self-proving provision recites that the requisite formalities were observed in executing the will. A self-proved will may be admitted to probate without additional witnesses or affidavits, but it is still subject to contest on such grounds as undue influence, lack of testamentary capacity, or prior revocation.

J. EXECUTION

Since the purpose of a witness is to furnish testimony at the time the will is presented for probate, considerable care should be made in selecting witnesses who most likely will be available at the time and place of probate. It is advisable, although not always possible, that the witnesses be permanent residents of the testator's home community. Concern about the availability of the witnesses is lessened if the will is self-proved under the laws of the probate jurisdiction.

Only one copy of the will should be signed and the remaining copies should note where the original is deposited. In some jurisdictions failure to locate the original will which was in the testator's possession creates a presumption that it was destroyed. A copy of the will, even though executed, may not be probated.

K. STANDARD OPERATING PROCEDURE FOR EXECUTING WILL

The following is recommended as standard operating procedure for legal assistance attorney supervising the execution of wills:

a. If the will consists of more than one page, the pages should be fastened together securely. The will should specify the exact number of pages of which it consists. This page numbering should not include the self-proving affidavit which is not part of the will.

b. The testator should read the will in its entirety and the legal assistance attorney should make certain that the testator understands the terms of the will.

c. The testator, three witnesses who have no interest under the will or by intestacy, and the legal assistance attorney should be alone in the room and remain there until the execution is completed.

d. The legal assistance attorney should ask the testator the following question: "Do you (state the name of the testator) declare in the presence of (name the witnesses) that the document before you is your will, that you have read the document, that you understand the document and that the document expresses your desires as to the disposition of your property at your death?" The testator should answer "yes" and his answer should be audible to the three witnesses. The legal assistance attorney should also ask if the testator is executing the document voluntarily, without any duress or coercion. The testator should again make an audible "yes" response.

e. The testator should initial or sign on the margin of each page of the will. This is done for purposes of identification and to prevent later substitution of pages. The testator should then sign his name at the end of the will. The three witnesses should be standing or sitting so that all can see the testator sign.

f. The legal assistance attorney should then ask the testator: "Do you request (names of witnesses) to witness the signing of your will?" Again the testator should answer "yes", and his answer should be audible to the three witnesses.

g. The legal assistance attorney should ask the witnesses if the testator appears to be of sound mind, to understand the nature of his actions, and not acting under any duress or coercion.

h. One of the witnesses should then read aloud the attestation clause.

i. Each witness should declare that the attestation clause is a correct statement.

j. Each witness should then sign his or her name in the place provided for the signatures of the witnesses below the attestation clause. As each witness signs, the testator and the other two witnesses should be placed so that each one can see the witness sign. The witness should place his or her full address opposite the signature. If the witness is in the military service, grade and social security number should also be included opposite the signature.

CHAPTER 2

ESTATE PLANNING

A. GENERAL

In the broadest meaning of the term, estate planning refers to the continuing process of coordinating an individual's financial affairs to secure the greatest economic security for self and family. It encompasses estate creation, estate conservation, and estate disposition. Estate planning is concerned with the nature and extent of the individual's investment program, the Social Security benefits to which the individual and his or her family may be entitled, the payment of other benefits incidental to employment, the testamentary distribution of assets, the adequacy and flexibility of life insurance programs, and even the post-mortem decisions made by an executor or administrator. A well-designed estate plan should provide not only for the orderly transfer of assets at the estate owner's death, but also take into account the need for retirement income and the contingencies of mental or physical disability.

Effective estate planning may amount to little more than preparation of a simple will and review of the beneficiary provisions of life insurance policies and employee benefit plans, or it may be a complex procedure involving trust instruments and inter vivos transfers of property. The size of the estate has some bearing on the complexity of the procedures, but the importance of planning is no greater for large estates than for those of modest size. In fact, the reverse is often true. Conserving 10 percent of a million dollar estate is certainly a worthwhile objective, but conserving 10 percent of a \$50,000 estate can be critical to the financial well being of surviving family members.

The legal assistance attorney is most often concerned with the orderly and economical distribution of an individual's property to surviving family members. In many cases, however, this requires more than a carefully drafted testamentary instrument. A knowledge of the broader aspects of estate planning is needed to assure that the dispositive instrument or instruments meet the requirements of the client's situation.

B. OBJECTIVE OF ESTATE PLANNING

The basis of any effective estate plan must be the wishes of the estate owner. Tax savings is a legitimate objective in planning an estate, but it is not the only

consideration. The best arrangement of a client's least tax.

Within the framework of the client's objectives, the emphasis should be on simplicity, flexibility, and economy. A relatively simple and straightforward plan is more readily understood by the client and usually easier to revise in light of altered circumstances. Flexibility is essential--particularly for younger persons who will modify their plans periodically over the years. Economy is equally important. Any unnecessary expense causes a reduction in the income available to surviving family members and may make it impossible to retain the same standard of living following the service member's death.

C. ESTATE ANALYSIS

1. General. A number of factors may cause the assets received by the beneficiaries to differ in character and value from the estate left by the decedent. These include Federal and state death taxes, administration costs, losses resulting from the forced liquidation of assets to meet liquidity requirements, and the loss of the decedent's management ability. Most estate planning techniques and procedures are designed to limit the adverse impact of these factors on an individual's estate.

2. Federal Estate Tax. This tax is imposed upon the privilege of transferring property at death (whether the beneficiaries are designated by the decedent or by the laws of intestate succession), and based upon the value of the entire estate left by the decedent (and cumulative taxable gifts made by the decedent during lifetime) rather than on the shares received by the respective beneficiaries.

The Tax Reform Act of 1976 established a unified transfer tax for the computation of both Federal estate and gift taxes and replaced the separate gift and estate tax exemptions with a unified credit. Under the Economic Recovery Tax Act of 1981, the unified credit increased annually until 1987 when it reached \$192,800. This credit completely exempts transfers up to \$600,000 in value from federal gift or estate tax.

The taxable estate (including any lifetime taxable gifts) must exceed the exemption equivalent before a tax liability is incurred. It is estimated that fewer than 0.5% of new estates in 1991 will be subject to Federal estate tax. Inflation may increase somewhat the percentage of estates subject to tax, but few estates of military personnel will be included in that number. When examining the potential size of the estate, however, the

combined assets of both spouses must be considered, and the face value of all life insurance must be included. This will generally result in a much larger potential estate than initially anticipated.

3. **State Death Taxes.** There is little uniformity among state transfer tax systems. The tax rates are typically less than those imposed by the federal government. Because the exemptions are often less liberal, state death taxes create a heavier burden on smaller estates than the federal estate tax. A few jurisdictions follow the federal approach and impose a tax on the value of the entire estate. A greater number impose an inheritance tax--a tax on the right to receive property from a decedent's estate. State law should be reviewed to determine whether or not the inheritance tax applies to the proceeds of life insurance payable to named beneficiaries or survivorship interests in jointly owned property.

Nearly all states levy a "credit estate tax" or "pick-up tax" designed to absorb the amount of the federal estate tax credit allowed for taxes paid to the state. This tax may be in addition to or in substitution for any other state inheritance or estate tax. In the latter case, state death taxes may be ignored for tax planning purposes. If no federal estate tax is incurred, no state tax is levied. If a federal tax is imposed, the state tax offsets the federal tax so that the total tax remains the same.

4. **Administration Costs.** Few estates of any size can be settled without incurring court costs, fees for the services of an attorney or other professional, and the commission and administrative expenses of the executor or administrator. These costs may be increased if the decedent owned property in two or more states requiring ancillary administration.

5. **Forced Liquidation.** An executor or administrator may be forced to sell estate assets in order to obtain cash for the payment of taxes and other estate administration costs. Under these circumstances, it may be difficult or impossible to realize full value for the property sold.

Personal representatives normally select the "prime" assets of the estate for liquidation. These are the assets which can be converted to cash most readily and with the least shrinkage from their fair market value. They may also be the most desirable assets from the standpoint of the beneficiaries. As a result, the family may be left with a disproportionate share of speculative or unproductive property unsuitable to its needs.

6. **Loss of Management.** The decedent's lifetime investment program may leave his or her estate with assets that are unproductive, speculative, or otherwise inappropriate for the needs of the surviving spouse and children. Rearrangement of the investment portfolio after death can be expensive and may result in sacrificing profits which could have been realized had the decedent lived.

7. **Role of Planning.** The adverse effects of some of these factors can be minimized by careful planning. Because they can seldom be eliminated entirely, it is advisable to estimate and allow for shrinkage in the value of the decedent's estate.

An estate is normally thought of as a principal sum, while the needs of the family are usually expressed as a monthly income requirement. Comparison of the available funds with the required income is an essential step in completing a preliminary analysis of the estate. An individual who considers himself to be in relatively modest circumstances may find that his net estate will total \$50,000 or more. This sounds like a substantial amount but it may produce less than \$250 per month of income. This may be an inadequate supplement to other income available to the family including their own earnings, Social Security payments, and pension and retirement annuity payments. The planning process should also consider the consequences of the family's consumption of the estate principal. Additional life insurance is often recommended as the most practical means of assuring liquidity, offsetting anticipated shrinkage in value, and making up any deficit in projected income. The need for insurance should be reevaluated as individual investment portfolios increase.

D. ESTATE TAX PLANNING

1. **General.** Liberalizations in the federal gift and estate tax laws since 1976 have made transfer taxes a moot issue for the vast majority of military families. This development has greatly simplified the work of legal assistance attorneys engaged in estate planning. Greater attention and expertise can be devoted to estate planning techniques beneficial to a substantial number of legal assistance clients, such as trusts for the benefit of minor children, without undue concern for adverse tax consequences.

Although the number of instances in which estate tax planning is required are relatively few, the consequences that follow from inadequate estate planning are severe. The lowest marginal tax bracket applicable to estates

that are subject to tax is 37%. Even families with sufficient wealth to be subject to estate tax can ill afford the loss of tens of thousands of dollars that could have been saved with proper tax planning.

The text that follows is intended to enable the legal assistance attorney to recognize situations in which tax planning is necessary and understand the basic principles and techniques of estate tax planning.

2. **Planning for the Unified Credit.** Effective use of an individual's unified credit is the single most important objective in estate tax planning. The unified credit offers the opportunity to completely exempt a substantial amount of wealth from gift or estate tax. The marital deduction, on the other hand, may only postpone the payment of estate taxes until the death of the surviving spouse.

The \$600,000 exemption created by the unified credit provides a bright line for determining whether an individual's estate may be subject to estate tax and appropriate planning should be initiated to minimize or eliminate the potential tax. The assets includable in the client's gross estate at death consist not only of property owned by the client, but also the face value of life insurance policies owned by the client on his or her life and pension or retirement benefits paid at or after the client's death. The legal assistance attorney must also consider the likelihood of future appreciation in the value of the client's assets and the effects of inflation in determining whether tax planning is appropriate.

If the estate planning client is married, the \$600,000 tax planning threshold applies to the combined assets of both spouses, including insurance proceeds and retirement benefits for each of them. It is generally assumed that the surviving spouse will otherwise inherit the entire estate of the first spouse to die so that the combined wealth of both spouses will be subject to estate tax at the death of the survivor.

The fundamental estate planning technique for a married couple involves the creating of a "bypass trust" or "unified credit exemption trust" at the death of the first spouse. This technique is intended to take advantage of the separate \$600,000 unified credit exemption of each spouse so that the children or other beneficiaries may ultimately inherit up to \$1,200,000 without incurring federal gift or estate tax. The potential tax savings may be as much as \$235,000.

The bypass trust is funded with all or a portion of the deceased spouse's unused unified credit exemption without causing any estate tax. Because the interests of the surviving spouse as beneficiary of the trust are

sufficiently limited, the trust assets are not included in the gross estate of the surviving spouse for estate tax purposes. In other words, the trust "bypasses" the taxable estate of the surviving spouse and the assets pass tax free to the children or other beneficiaries. The surviving spouse's own unified credit exemption may be applied to his or her separate property.

Obviously, the surviving spouse must forego ownership of the assets used to fund the bypass trust. However, the spouse may still receive substantial financial benefits from the trust without being deemed to have a general power of appointment over the trust assets which would cause the assets to be taxable at the spouse's death. The spouse may receive all trust income, and principal may be distributed to the spouse in the discretion of the trustee. The spouse may serve as sole trustee or as a co-trustee, but in such cases the discretion to distribute principal to the spouse must be limited to an ascertainable standard, such as the spouse's needs for support, maintenance, and health. The spouse may have the right to appoint principal of the trust during lifetime or at death, provided that the appointees cannot include the spouse, the spouse's estate, the spouse's creditors or creditors of the spouse's estate. Finally, the spouse may have the right to invade the trust principal for his or her own benefit in an annual amount not to exceed the greater of \$5,000 or 5% of the value of the trust principal.

3. **Planning for the Marital Deduction.** Beginning in 1982, qualifying transfers between spouses made during lifetime or at death became completely free of federal gift or estate tax. This unlimited marital deduction is the second most important consideration in estate tax planning for a married couple.

The unlimited marital deduction provides the assurance that no estate tax need be paid at the death of the first spouse. It is incorrect to conclude, however, that all of the estate of the first spouse to die should pass to the survivor in a manner qualifying for the estate tax marital deduction. Assets that qualify for the marital deduction at the death of the first spouse will be subject to estate tax at the death of the survivor (or subject to gift tax if disposed of by the survivor during lifetime). The net effect may be only to postpone the tax until the death of the surviving spouse. The preferred plan is to fund a bypass trust at the death of the first spouse with estate assets having an aggregate value equal to the available unified credit exemption, and transfer the remaining assets to the surviving spouse in a manner qualifying for the estate tax marital deduction. This plan realizes the full tax

savings of both spouses' unified credits and the benefits of tax deferral.

The deferral of all estate taxes until the death of the surviving spouse may actually result in greater total taxes than if a portion of the taxes were paid at the death of the first spouse. This result is attributable to the graduated gift and estate tax rates which range from 37% to 50%. If all the estate tax is paid at the death of the second spouse, a portion of the tax is likely to be paid at higher rates than if the tax burden had been allocated between the two estates. Offsetting this potential increased tax is the financial benefit provided by tax deferral. The surviving spouse will enjoy greater income after the death of the first spouse if assets are not consumed to pay estate taxes, and the inheritance of the children after the death of both spouses will be enhanced by the appreciation on the assets that otherwise would have been expended for taxes.

The ideal estate tax plan for a married couple would provide the option of tax deferral but retain the flexibility to reduce the marital deduction transfer at the death of the first spouse. This would allow the surviving spouse's life expectancy at that time to be taken into consideration in evaluating the probable benefits of tax deferral. Fortunately, this flexibility may be achieved in either of two ways. The spouse may be given the option to disclaim all or a portion of the marital deduction bequest, in which case the disclaimed property will be added to the other assets in the bypass trust. If the marital deduction bequest is in the form of a qualified terminable interest property (Q-TIP) trust, the executor of the deceased spouse's estate may elect to qualify less than the full amount of the trust for the estate tax marital deduction. The portion of the trust for which the election is not made will be subject to tax in the first estate but escape taxation at the death of the survivor in the same manner as a bypass trust.

The most typical transfers qualifying for the gift or estate tax marital deduction include outright transfers, general power of appointment trusts and Q-TIP trusts.

a. Outright Transfer.

Outright ownership of property passing to a spouse by gift, bequest, or operation of law is the simplest and most common form of marital deduction transfer. A transfer in trust rather than outright may be more appropriate if the recipient spouse is considered unable to properly manage the assets or if the transferor wants to guarantee the ultimate beneficiaries of the property

at the spouse's death. The latter consideration is particularly important if the transferor has children by a prior marriage or is concerned about the possible remarriage of the surviving spouse.

b. General Power of Appointment Trust.

Before the advent of the Q-TIP trust in 1982, the general power of appointment trust was the most frequently used marital deduction alternative to the outright transfer. This trust offers the opportunity of professional investment and administrative management for the trust assets on behalf of the spouse, but only limited control over the disposition of the assets at the surviving spouse's death. In addition, the assets held in trust at the spouse's death will generally escape probate and its related expenses.

The general power of appointment trust requires that the spouse receive all the trust income at least annually. The spouse may, but need not, be authorized to receive distributions of principal in the discretion of the trustee. The spouse must be given a general power of appointment over the trust assets during lifetime, or more typically, by will. If the spouse fails to exercise a testamentary power of appointment, the trust assets pass as otherwise provided in the trust instrument.

One other advantage of the general power of appointment trust is the option to permit the spouse to make gifts of trust property to children or other family members. These gifts may qualify for the gift tax annual exclusion discussed later and reduce estate taxes at the spouse's death.

c. Q-TIP Trust.

The Q-TIP trust has probably surpassed the general power of appointment trust in popularity in recent years. This trust offers two unique advantages. The testator (or transferor in the case of an irrevocable Q-TIP trust created during lifetime) directs the disposition of the trust assets at the death of the spouse. This assures that the testator's children or other family members will be the ultimate beneficiaries of the trust. The second advantage is the trust's flexibility for purposes of the gift or estate tax marital deduction. The testator's executor (or the transferor in the case of an inter vivos trust) may elect to qualify all or any portion of the trust assets for the marital deduction. The portion of the trust for which the election is made will be included in the surviving spouse's estate for federal estate tax purposes. The remaining portion will be treated in the same manner as a bypass trust.

To qualify for the Q-TIP election, the trust must pay all its net income to the spouse at least annually for his or her lifetime. Neither the spouse nor any other person may have a power to appoint the trust assets to any person other than the spouse during the spouse's life. If desired, the instrument may permit the trustee to invade the trust principal for the spouse's benefit. (It is recommended that any such invasion provision be limited to an ascertainable standard used in bypass trusts if the spouse is to be a trustee.)

The primary disadvantage of the Q-TIP trust is that the spouse is not permitted to make gifts to children or other beneficiaries from the trust principal.

4. Typical Estate Plans. There are at least three different estate plans that incorporate the tax planning advantages of the bypass trust and the unlimited marital deduction. These include the disclaimer trust, the single Q-TIP trust, and the Marital Trust/Family Trust (or A/B Trusts).

a. Disclaimer Trust.

The simplest estate plan that offers the tax planning benefits of both the bypass trust and the marital deduction is the disclaimer trust. The residue of the estate passes outright to the surviving spouse who is given the option of accepting the bequest or disclaiming all or a portion of the bequest. The will provides that any portion of the bequest disclaimed by the spouse passes into a bypass trust for the benefit of the spouse.

The advantage of the disclaimer trust is that the surviving spouse can wait until the death of the testator to decide how much, if any, of the estate should be placed in a bypass trust to achieve the optimum tax savings. This is especially beneficial when it is uncertain whether the spouses' combined estates will exceed the unified credit exemption, depending upon the appreciation of their assets or other factors. This is also a useful device for the spouse having the smaller estate if he or she predeceases the spouse with the larger estate.

The disadvantage of the disclaimer trust is that its success depends upon the tax planning sensitivity of the surviving spouse. A decision to disclaim any of the estate must be made in a timely fashion after the testator's death and before the surviving spouse has accepted the benefits of the estate assets in a manner that is inconsistent with the disclaimer. It is not surprising that few surviving spouses are willing to give up any financial benefits at this difficult time.

b. Single Q-TIP Trust.

A more practical alternative to the disclaimer trust is the single Q-TIP trust. The Q-TIP trust offers the tax savings and tax deferral benefits of a bypass trust or a marital deduction trust, or both, depending upon the election made by the executor. To the extent an election is made, the trust assets will qualify for the unlimited marital deduction and be taxable to the same extent in the estate of the surviving spouse. The unelected portion of the trust is subject to estate tax at the death of the first spouse (and presumably sheltered from tax by the available unified credit), but escapes taxation at the death of the surviving spouse.

A potential disadvantage of the single Q-TIP trust is that all the assets are retained in trust for the spouse's lifetime even if it is determined that the tax savings of the bypass trust are not needed. On the other hand, the executor of the estate, if someone other than the surviving spouse, may be more objective in terms of making an appropriate election for estate tax purposes than the surviving spouse in the case of a disclaimer.

c. Marital Trust/Family Trust.

The classic estate plan combines a marital deduction trust (or outright marital share) and a bypass trust. This plan is often referred to as the "A/B Trusts" or "Marital Trust/Family Trust." An amount equal to the unused unified credit exemption is placed in a bypass trust (the "B" trust or "Family Trust") and the balance of the estate passes in another trust qualifying for the marital deduction (the "A" trust or "Marital Trust").

Because of the flexibility afforded by two separate trusts or shares, this plan is especially appropriate when it is relatively certain that the estate of the deceased spouse will exceed the unified credit exemption. Marital deduction flexibility is achieved by providing that the surviving spouse may disclaim all or any portion of the Marital Trust, in which case the disclaimed assets will be added to the Family Trust. In the alternative, the Marital Trust may be a Q-TIP trust which will allow the executor the option of making less than a full marital deduction election.

A variation of the two trust estate plan involves dividing the marital deduction portion into two separate trusts. This plan offers the benefits of a general power of appointment trust or outright marital share to permit the surviving spouse to make lifetime gifts to children or other descendants, and the estate tax flexibility of the Q-TIP trust. Because of the additional costs

incurred in administering three separate trusts, this variation is advisable only for large estates.

E. GENERATION-SKIPPING TRANSFER TAXES

The Tax Reform Act of 1986 (TRA '86) repealed retroactively the generation-skipping transfer tax introduced in 1976 and substituted a somewhat simpler but more far-reaching tax. The new tax is intended to rectify the perceived inequity that results when wealth is transferred to beneficiaries that are two or more generations younger than the transferor. If only one tax were imposed on the transfer, the property would escape the taxation that would otherwise be due at the death of the beneficiary only one generation younger than the transferor.

Fortunately, the new tax allows each individual a lifetime exemption of \$1 million, similar to his or her separate unified credit exemption. In addition, before 1990, an exclusion of \$2 million applies to direct transfers to each grandchild of the transferor. Obviously, the legal assistance attorney will not need to consider the possible impact of generation-skipping transfer (GST) taxes except in cases where the client has substantial wealth. On the other hand, if a generation-skipping transfer exceeds the transferor's available exemption and any applicable exclusion, the combined gift or estate tax and GST tax may exceed the total value of the transferred assets.

The rules governing the application of the GST tax and the options available for minimizing the tax are exceedingly complex. As a general rule, if the combined assets of a married couple exceed \$1 million and the estate plan includes potential benefits for grandchildren or other persons at least two generations younger than the testator and his or her spouse, the legal assistance attorney should be alert to the possible application of the GST tax and advise his clients accordingly.

F. GIFTS

A carefully considered program of gifts to family members is another effective estate planning tool. Such a program should only be initiated in large estates unless it is motivated by some purpose other than tax savings. Where the estate is quite large, it is possible to make impressive savings without depriving the donor of funds he may later need for his own use.

Liberal exemptions and exclusions enable an individual to give away significant amounts of property without incurring any gift tax. An individual may give \$10,000 to any number of persons each year without paying

a federal tax on the gifts. The donor's spouse may elect to "split gifts" in a particular year so that the donor can take advantage of the spouse's separate \$10,000 annual exclusion. Thus, for example, parents may be able to gift up to \$20,000 to a child per year tax free. Gifts of future interests, such as remainder interests passing in trust, do not qualify for the annual exclusion. In addition to the annual exclusion, an unlimited gift tax exclusion applies to certain tuition and medical care payments on behalf of an individual - regardless of the relationship of the donor and the person on whose behalf the payments are made.

Certain assets are especially suitable as gifts from a tax standpoint. Insurance policies on the donor's life are particularly appropriate gifts. The value of a policy for gift tax purposes is approximately equal to its cash surrender value (or unused premium cost for term insurance), but the potential reduction in federal estate tax is based on the proceeds payable at the insured's death.

Gifts of income-producing property to family members in a lower income tax bracket can in some cases reduce the total income taxes payable by the family unit. The opportunities for income-shifting have been largely curtailed by the Tax Reform Act of 1986. Investment income of children under age 14 in excess of \$1,000 per year is taxed at the marginal tax rate of the parents. Changes in the income tax laws applicable to trusts have eliminated the income tax benefits of reversionary trusts and spousal remainder trusts.

State laws should be reviewed carefully before initiating a gift program. Residents of community property states in particular should consider the specific requirements of their jurisdictions before attempting to convert community property into the separate property of one of the parties.

G. JOINT TENANCY

Joint ownership with right of survivorship is a popular method of holding title to the family home and other types of property. Title to such jointly held property passes to the survivor by operation of law at the death of one joint tenant.

Although many advantages are claimed for the joint tenancy arrangement, some of these may be illusory. For example, many people believe that because jointly held property passes to the survivor outside the probate estate, the value of the asset is not included in the decedent's taxable estate. Although that belief may be true in the case of some state inheritance taxes, one-half of the value of the property held by spouses jointly

with a right of survivorship will be included in the estate of the first to die for federal estate tax purposes.

Perhaps the principal disadvantage of joint tenancy arrangements is that the jointly owned assets will not be available to fund a bypass trust that may produce significant estate tax savings at the death of the surviving spouse.

H. WILLS AND TESTAMENTARY TRUSTS

The last will and testament of a decedent normally is regarded as the primary dispositive instrument of his estate. It should be recognized in planning small estates (and occasionally larger ones) that the bulk of the decedent's assets may pass to the wife and children as surviving joint tenants, as named beneficiaries under life insurance policies and retirement plans, and by operation of law. This does not detract from the desirability of having a will, but it does underscore the necessity for coordinating its provisions with those other benefits to which surviving family members may be entitled.

In addition to its role as a dispositive instrument, a will can serve other valid functions. For the young family in the military, a major reason for having a will may be to appoint a guardian to have custody of minor children. Other persons may use a will to grant broad powers to their executors, and still others may use a will to avoid estate taxes. Perhaps the most important reason for a soldier to have a will is to provide for the financial security of their children through the use of trusts or custodial accounts.

Estate owners can, if they wish, leave everything they own to their families without restrictions of any kind. This procedure has the advantage of simplicity, and may be a satisfactory arrangement if the estate owner has complete confidence in the family's judgment and experience in financial matters. The disadvantages of unrestricted bequests are readily apparent. There are no safeguards against the consequences of an unwise second marriage, reliance upon unsound investment advice, or general improvidence on the part of estate beneficiaries. In effect it exposes the entire estate to hazards which may defeat the testator's expectations. If the beneficiaries are minors or incapacitated, the bequests will be subject to the expense and inflexibility of legal guardianships.

Estate owners may be tempted to impose restraints on their beneficiaries' access to estate assets. By the severance of joint tenancies, the creation of legal life estates, and the adoption of restrictive settlement

options on insurance policies, the estate owner may limit the family to the income or use of the assets constituting the estate and defer their right to dispose of the assets themselves. This provides some assurance that the principal of the estate will not be dissipated, but it offers little or no flexibility for meeting emergencies. Major illnesses, long term disabilities, increased costs of higher education, and continued inflation are some of the factors which make it dangerous to rely upon this approach.

The remarkable versatility of the modern trust makes it adaptable to virtually any situation where immediate and outright ownership of estate assets is undesirable. A trust makes it possible to separate the responsibilities of property ownership from the benefits of ownership.

Particular care should be exercised in the selection of a trustee. A corporate trustee can provide experience, impartiality, and continuity of existence. An individual can provide greater familiarity with the family situation. A combination of an individual and a bank or trust company as cotrustees offers the advantages of each but may result in increased fees. Consideration must be given to the type of services desired, their cost, and state restrictions as to who may act as fiduciary. (See Chapter 4, infra, for a synopsis of state restrictions on fiduciaries.)

The trustee may be given discretionary authority to accumulate trust income or to distribute it, equally or unequally, among various beneficiaries. This discretion may be limited by some external standard related to the beneficiaries' needs or other sources of income, but such restrictions are not required. Unrestricted discretion permits the trustee to consider not only the financial situation of the beneficiaries but also the tax consequences of the distribution. The discretionary authority to "sprinkle" income among several taxpayers, or to accumulate it in the trust, enables the trustee to minimize the total tax attributable to such income. The potential income tax savings, however, have been significantly curtailed by reductions in the tax rates and other changes promulgated by TRA '86.

To the extent the trustee exercises this discretion as the testator would have wished, the testator has preserved a "second look" at the distribution plan devised before his death. There can never be complete assurance that the trustee will exercise his discretion exactly as the testator would have preferred, but the arrangement does offer flexibility to meet contingencies such as catastrophic medical expenses.

The advantages of a contingent trust for children after the death of both spouses is illustrated by the

hypothetical case of a husband and wife with sons 14 and 22 years of age. The older son has completed college and is self-supporting. If they live, the parents expect to provide the same support and educational opportunities for the younger son. This plan can be carried out by the survivor even if one parent dies during the next few years. If both parents die during the minority of the younger child, however, the estate would typically be divided equally between the sons, and the younger boy would be placed at a financial disadvantage when compared with his older brother. His share of the estate would be reduced by the costs of support and education which have already been conferred upon the older son by the parents.

The contingent trust is probably the best means of substituting "equity" for "equality" in this situation. The trustee could be directed to hold the entire estate (including life insurance proceeds payable to the estate or to the trustee as contingent beneficiary) as a single fund for either a specific period of time or until the younger son reaches a designated age. During this period, the trustee has discretionary authority to distribute income and principal for either son on an "as needed" basis. At the end of the period the trust is divided into equal shares which may be distributed to the sons or retained by the trustee as two separate trusts.

I. INTER VIVOS TRUST AGREEMENTS

The estate planning benefits provided by testamentary trusts may also be achieved by the use of a revocable trust agreement. A revocable trust is particularly beneficial for individuals, such as service members, who frequently change their residence or legal domicile. The same dispositive provisions may be included in the trust agreement to take effect after the grantor's death. Under the terms of the instrument, the grantor retains the right to amend or revoke the agreement before his death, providing the same flexibility as a will.

The revocable trust agreement may be either funded or unfunded. A funded trust with an independent trustee may relieve the grantor of the burden of managing the investment assets contributed to the trust, and give him the opportunity to appraise the trustee's performance. A funded revocable trust offers few, if any, income or estate tax advantages. All the assets held in trust at the grantor's death or payable to the trustee are includable in the grantor's gross estate for federal estate tax purposes.

The unfunded revocable trust is more commonly used. The trust is created by contributing a nominal amount of

cash, or perhaps a savings bond, to the trust or by designating the trustee as primary beneficiary of the grantor's life insurance policies. The trustee typically has no investment or administrative responsibilities during the grantor's lifetime.

Whether funded or unfunded, the revocable trust does not eliminate the need for a will. In most cases the residue of the estate passes under the will to the trustee serving under the trust agreement by use of a "pourover" provision. As a result the assets of the trust, the life insurance proceeds and the residue of the probate estate are consolidated, resulting in more efficient and better coordinated administration.

In spite of widely publicized literature advocating the revocable trust as means of "avoiding probate," it seldom accomplishes this purpose. The primary reasons for the probate procedure (payment of debts, determination and settlement of tax liabilities, and the orderly winding up of the decedent's business affairs) are not eliminated by the creation of a trust. The revocable trust only avoids probate for assets used to fund the trust during the grantor's lifetime and insurance proceeds or other benefits payable directly to the trustee at the grantor's death. Avoiding probate costs may be one reason for establishing a trust, but should seldom be the only reason for doing so.

Irrevocable trusts created during the grantor's lifetime are used primarily to achieve specific tax advantages without placing outright ownership and control of the property in the hands of the beneficiary. The grantor may reduce his gross estate by creating an irrevocable trust of certain property and by retaining no control or interest for himself or for his estate. Creation of such a trust is usually treated as a gift for federal gift tax purposes. Depending on the terms of the trust instrument, a contribution to the trust may or may not qualify for the gift tax annual exclusion.

The income from irrevocable trust property, if the trust is properly drafted, is generally taxed to the trust or to the beneficiary rather than to the grantor. The opportunity for substantial income tax savings by the use of irrevocable trusts has been virtually eliminated by income tax changes under the Tax Reform Act of 1986.

J. LIFE INSURANCE

The points discussed in this section relate specifically to certain estate conservation features of life insurance which estate owners and their advisers should consider in designing estate plans.

The method selected for the distribution of life insurance benefits is nearly as important as the amount

of the proceeds. If the proceeds are made payable to a trustee or the executor of the insured's estate, a lump sum payment is normally contemplated. When the designated beneficiary is an individual, however, consideration should be given to the choice of settlement options available under the contract. Policies issued by most companies give the insured (and sometimes the beneficiary) at least three alternatives. The insured may elect to have the proceeds held by the company at interest; he may have the proceeds (with interest) paid out over a specified period of time in installments; or he may have the proceeds applied toward the purchase of an annuity for the beneficiary's lifetime. Payment of the insurance proceeds in a lump sum to a trustee under a will or trust agreement may be preferable to these settlement options.

As a general rule, the insured should select an option which makes a substantial amount of income available to the family in the years immediately following death, even at the risk of providing inadequate income for the surviving spouse in later years. There are several reasons for this recommendation. First, the financial needs of the family at this time are likely to be relatively heavy. The support and education of minor children will be a matter of primary concern to the surviving spouse who may find it difficult to obtain employment compatible with parental responsibilities.

Although it may be difficult to predict the family's income requirements accurately, the estate owner's life insurance program can be tailored to the estimated needs. It can be revised as often as necessary without requiring changes in other dispositive instruments. In addition, the estate owner is free to invest in non-liquid assets or to make long-term commitments without undue concern about the "convertibility" of these assets into liquid and income producing property in the event of his or her premature death.

Occasionally an estate owner will want a specific asset of his or her estate to pass to a child immediately at death. Business interests, farms, valuable heirlooms, collections which have substantial intrinsic value, and other items of a similar nature are sometimes earmarked in this manner. If such a gift leaves insufficient assets in the estate to provide adequately for the support of the surviving spouse or other family members, life insurance can be used to make up the deficiency. Policies may also be obtained to equalize gifts among the children in situations of this kind.

Life insurance should also be considered as a possible solution to the difficult problem of providing for the financial well-being of a handicapped child. In the absence of a trust, the annuity provisions available

under most insurance contracts can be used to guarantee a life income for the child. The regularity of this income and the fact that it cannot be outlived can be of greater importance to the welfare of the child than the size of the income. It is well to keep in mind, of course, that inflation may reduce the purchasing power of any income that is to be paid over an extended period of years.

As a part of the estate planning process, the ownership of existing and additional insurance should be reviewed. The proceeds of any policies in which the insured has any incidents of ownership will be included in his gross estate for federal estate tax purposes. Vesting ownership in a beneficiary is frequently suggested as a means of avoiding this result. This is an appropriate procedure for some cases, but the insured should be fully aware that there may be gift tax consequences to the transfer of the policies and subsequent payment of insurance premiums. Furthermore, the insured will be unable to exercise any ownership rights under the policy. Because of the unlimited marital deduction there is no advantage to transferring insurance ownership to a spouse. In fact, such a transfer may be detrimental to the client's estate plan since the proceeds can not be used to fund a bypass trust.

K. PERIODIC REVIEW

Regardless of how expertly prepared and perfectly coordinated an estate plan may be, it should be reviewed frequently to take into account any changes in the estate owner's objectives. Revisions may also be required as a result of changes in family circumstances, modification of military benefit programs, changes in tax law, a change of residence or domicile, retirement from military service, or inheritance of property. This review should be suggested by the legal assistance attorney whenever these or other factors indicate that the existing plan may be outdated. Additionally, at the time the legal assistance attorney prepares a will or estate plan for a client, he or she should advise the client of the need for periodic review of the plan and that the legal assistance office will not be able to monitor the client's future needs due to change of personnel. The burden should be placed squarely on the client to initiate periodic review of his or her estate plan.

The preparation of a comprehensive estate plan requires familiarity with a number of specialized fields of knowledge. Legal assistance attorneys should urge soldiers to obtain the advice and assistance of professional counsellors in matters relating to trusts, life insurance, and investments. The Estate Planning

Checklist (para. N, infra) will suggest some of the points on which consultation may be of particular value.

L. POST MORTEM ESTATE PLANNING

Important estate planning opportunities remain even after the testator's death. The opportunities available at this time include estate tax savings, income tax savings for the estate, and income tax savings for the individual beneficiaries.

Since a detailed treatment of the methods and alternatives of post mortem planning is outside the scope of this chapter, an abbreviated outline of the major elections is included.

1. Estate Tax Savings

(a) The executor should review the decedent's records for lifetime transfers.

(b) The surviving spouse may elect to take an elective share of the estate if this will increase the amount of the marital deduction.

(c) The surviving spouse may disclaim a portion of the estate to reduce or eliminate the marital deduction.

(d) A disclaimer may be made by another person in favor of the surviving spouse to increase the marital deduction.

(e) The executor may elect to value property for federal estate tax purposes at the alternate valuation date.

(f) The executor should consider various deductions which are allowed on estate and income tax returns.

(g) The executor or trustee may satisfy a marital deduction share with non-appreciating (nongrowth) assets to minimize additional estate tax at the surviving spouse's death.

(h) The executor must elect between estate tax and income tax deductions for certain administration expenses.

(i) A beneficiary may disclaim property when a charity is the successor by terms of the will to obtain or increase a charitable deduction.

(j) Certain Treasury bonds held by the decedent, referred to as "flower bonds," are redeemable at par at the death of the owner for the purpose of applying the proceeds to payment of the federal estate tax.

2. Income Tax Savings for the Decedent

(a) A joint return for the decedent and surviving spouse may be filed for the year of death if the surviving spouse does not remarry before the close of the tax year.

(b) Medical expenses of the decedent may be deducted on the decedent's final income tax return notwithstanding that they are paid after death.

3. Income Tax Savings for the Estate and Beneficiaries

(a) The executor must elect between estate tax and income tax deductions for certain expenses of estate administration.

(b) The estate may adopt a fiscal year other than December 31 to provide income tax deferral for beneficiaries.

(c) Undistributed income in each year may be taxed separately to the estate. Throwback rules apply to trusts but not estates, so later distributions of accumulated income do not result in tax to the beneficiaries.

M. SMALL ESTATE PRACTICE AND PROCEDURE

Familiarity with the area of small estate practice and procedure may avoid unnecessary expenses involved in probate. In an increasing number of states, "small estates" are released from probate without requiring the intervention of the probate court. The purposes of intervention by the probate court in estate administration are:

1. To determine the distributees of the estate, either under the laws of intestacy or the terms of the will, and distribute the estate accordingly;

2. To provide for the payment of debts owed by the decedent, and to cut off claims against the estate after a reasonable period of time; and

3. To provide for the collection of inheritance, estate, and income taxes.

A small estate is an estate with minimal assets, defined in various state statutes as a specified dollar amount, usually not exceeding a few thousand dollars, or an amount sufficient only to pay the family allowances and certain expenses, such as the cost of the last illness and funeral. When an estate is of such limited size the functions of formal administration are unnecessary. It is not difficult to collect the estate assets, simplifying one of the large burdens in the settlement of an estate. The distributees are usually

the spouse, children or immediate family of the decedent. The decedent's debts are often minimal and can be provided for without prejudice to the creditors. Finally, there are usually no estate or inheritance taxes imposed on the estate or beneficiaries.

Formal administration of a small estate would result in the costly dissipation of the estate and unnecessary delay in distributing minimal assets needed by the family immediately following the decedent's death. The measures adopted by state legislatures for expediting the distribution of small estates vary greatly. The Committee on Probate and Estate Administration of the American Bar Association has categorized the various approaches as follows:

1. States with statutes authorizing collection, distribution or payment of assets of small dollar value without action by a court;

2. States with statutes providing for summary distribution to the surviving spouse and/or children for family support or exempt property, by court order dispensing with or terminating administration; and

3. States with statutes for summary distribution on court order based on miscellaneous grounds, specifying small dollar maximums or family support requirements.

N. ESTATE PLANNING CHECKLIST

1. General

- (a) Does the estate plan make optimum use of each spouse's unified credit exemption and the unlimited marital deduction?

- (b) Would a gift program be advisable?

- (c) Is either the husband or wife the current or anticipated beneficiary of other estates or trusts? Has the effect of potential inheritances been considered in the planning process?

- (d) Are there any business interests or other assets which would require immediate attention following the estate owner's death?

- (e) Has a current inventory of estate assets been prepared to assist the executor?

- (f) Are the estate owner's wishes regarding burial and other personal matters (as opposed to binding dispositions of property) reflected in a letter or written memo kept with other important papers?

(g) Are liquid assets available?

(h) Are the names of all beneficiaries, especially charitable organizations, correct?

(i) Has the corporate fiduciary, if any, been informed of its selection and reviewed the instrument?

(j) Have the insurance policy beneficiaries been changed in accordance with the estate plan, i.e., policies made payable to the estate or the trustee if called for in the plan?

(k) Have all aspects of the estate plan been coordinated (or reviewed) by an attorney who is thoroughly conversant with the laws of the jurisdiction in which probate proceedings will be carried out?

2. Wills and Trusts.

(a) Have current dispositive instruments been executed by both husband and wife?

(b) Have formalities of execution required by the state of domicile been met?

(c) Will ancillary administration be required?

(d) If an individual executor or trustee has been notified, has he or she agreed to accept this responsibility? Has an alternate been designated? Will the individuals named as executor or trustee qualify under the laws of the decedent's domicile and any ancillary jurisdiction?

(e) Has a guardian been appointed (or nominated) for minor children? Will the guardian qualify under the laws of the decedent's domicile?

(f) If a corporate fiduciary has been designated, will the corporate fiduciary qualify under the laws of decedent's domicile?

(g) Is the fiduciary required to be bonded, or should the bond be waived?

3. Property Ownership.

(a) Is title to any property held in joint tenancy with right of survivorship?

(The existence of joint tenancies may be inconsistent with certain testamentary dispositions and

may result in underfunding a bypass trust with the unified credit exemption.)

(b) Are any assets held as community property?
(One-half of each asset held as community property is "owned" by each spouse by operation of law. This fact is important in valuing estates which include community property.)

(c) Do the estate owners hold a beneficial or reversionary interest in any property?

(Such interests are easily overlooked unless specific inquiries are made. Their effect on the potential estate tax and the liquidity requirements of the estates of both spouses should be considered.)

4. Military, Veterans, and Social Security Benefits.

(a) Has a schedule of potential benefits to survivors been prepared?

(The nature, amounts, and eligibility requirements for these benefits are subject to frequent modification. Consult current reference materials for pertinent data.)

(b) Has a survivorship annuity been elected under the Survivor's Benefit Plan?

(c) Are beneficiary designations for all military and veteran benefits current?

(d) Has the estate owner been reminded that eligibility for certain Social Security and veteran's benefits may be forfeited if the surviving spouse supplements other income by working?

(e) Are any benefits available to the estate owner's survivors by virtue of any civilian employment in which he or she has engaged?

5. Life Insurance.

(a) Has ownership of policies on the estate owner's life been ascertained? Are contingent owners designated? Would transfers of ownership be advantageous?

(b) Does the estate owner hold any policies on the lives of others? Would contingent ownership be advisable to keep such policies out of the estate owner's probate estate?

(c) Are all beneficiary designations current and have contingent beneficiaries been properly designated?

(d) Has the use of settlement options been considered?

(e) Do any settlement options elected by the insured include "spendthrift" provisions?

(f) Do policy provisions and the provisions of state law regarding survivorship presumptions coincide with any presumptions established in the dispositive instruments? Has a "delay" clause been considered?

(g) Will policy loans or collateral assignments interfere with the planned distribution of insurance proceeds?

(h) Have any policies on the insured's life been transferred for valuable consideration which may cause part of the death proceeds to be taxed as ordinary income to the beneficiary?

(i) Do any policies include options, endowment features, conversion privileges, supplemental benefits, or other provisions which deserve special consideration or require action by the policy owner?

(The Automatic Premium Loan, for example, is included in many policies to prevent the policy from lapsing due to the insured's failure to make a scheduled premium payment prior to the expiration of the grace period. If it is not included in the policy at the time of issue, most companies will add it, without cost, at the policyowner's request.)

(j) Are policy dividends being applied under the most favorable dividend options?

(k) Is additional insurance needed to assure estate liquidity or to provide a guaranteed level of income for surviving family members?

O. CONFLICTS OF INTEREST

Although attorneys routinely advise married persons concerning estate planning, there are dangers involved in joint representation. Before undertaking representation of both spouses, the attorney should advise the spouses of the risks of joint representation and obtain both spouses' consent. The parties should be

advised that a conflict of interest concerning property distribution could arise in the future which would require the attorney to withdraw from the representation. This often occurs when the spouses have separate families by prior marriages. Additionally, the parties should be informed that communications they make to the lawyer are not be protected from disclosure by the attorney-client privilege if, for instance, there is subsequent litigation between the parties. Each client must be willing to waive his or her individual right to having the lawyer guard his or her confidences. Each must be willing to authorize the lawyer to disclose all of the assets involved to each party, as well as to disclose the terms of each party's will.

Once the parties consent to this, the lawyer may represent both parties. The lawyer, however, should still be alert to the possibility of conflicts in the future. Some authors suggest that a letter be sent to the clients after the initial interview to document this advice. Figure 1 is a suggested form letter which may be sent to clients for such purposes.

FIGURE 1

SAMPLE DUAL REPRESENTATION LETTER
FOR NEW ESTATE PLANNING CLIENTS

Re: Your Estate Plan

Dear Mr. and Mrs. _____

This will confirm the following:

1. You have requested me to represent each of you and to advise you on certain estate planning matters.

2. It is contemplated that the matters to which my representation will extend will include the following:
[Choose from the following or modify as scope of representation dictates]

a. Analysis of your existing wills, codicils, trust agreements and property agreements, if any;

b. Analysis of the assets owned by each of you at the time of your marriage, including consideration of the fair market value of such property and the nature in which title was then held;

c. Analysis of all property now owned by each of you, including consideration of its fair market value and the manner in which title to such property is now held, and a categorization of such property as separate, community, or quasi-community property;

d. Discussions about the manner in which you wish to dispose of any property over which you may have any power of disposition at the time of your death;

e. Analysis of the tax impact of such disposition and recommendations for alternative dispositions; and

f. Preparation of the documents necessary to accomplish the desired disposition, including the drafting of wills, trusts, property agreements, and other documents as may be required.

3. I have advised each of you that, during the course of the estate planning work, conflicts may arise between you with respect to the ownership of your property (separate, community, or quasi-community property) and its desired disposition during your

lifetimes and at your deaths. Differences of opinion on the disposition of the property, under ethical rules, do not prevent me from continuing to represent both of you. However, during the course of the estate planning, issues may arise about the ownership of certain property, or other conflicts of interest between you may arise. Ordinarily, under such circumstances, one attorney cannot represent both of you. The reason it may be better for each of you to have separate independent counsel is to avoid the possibility that my advice to one of you is influenced by my representation of the other. Nevertheless, you have requested me, with a full understanding of the advantages of independent counsel, to represent both of you in the above matters.

4. Although I doubt that it will happen, if conflicts arise between the two of you of such nature that it is impossible in my judgment for me to perform my obligations to each of you in accordance with this letter, I will withdraw from all further representation of both of you in this matter and advise one or both of you to obtain independent counsel.

5. You have each agreed that there will be complete and free disclosure and exchange of all information that I receive from either or both of you in the course of my representation. You have each agreed that such information shall not be confidential between you irrespective of whether I obtain such information in conferences with both of you or in private conferences with only one of you, including any conferences that may have taken place before the date of this letter.

Sincerely,

[Signature of attorney; typed name below]

APPROVED THE _____ day of _____,
19____.

[Signature of husband; typed name below]

[Signature of wife; typed name below]

FIGURE 2

SAMPLE DUAL REPRESENTATION LETTER FOR EXISTING ESTATE PLANNING CLIENTS WITH SEPARATE FAMILIES

Dear _____:

This letter is written to you in order to insure, as much as we can insure, the validity and objective independence of the advice, counseling, and planning that I have given or done for each of you through the years. I have, of course, represented each of you particularly in the planning of your respective estates, which planning provides for your respective separate families.

Matters to which such representation has extended, and is contemplated will extend, include the following:

1. Analysis of your wills, codicils, trusts, and property agreements, if any.
2. Analysis of the assets owned by each of you, including consideration of their value and the nature in which title is or should be held, and the categorization of such assets as separate or community property.
3. Discussions about the manner in which you wish to dispose of such property.
4. Analysis of the tax impact of such disposition and recommendations relative thereto.
5. Preparation of the documents necessary to accomplish the desired disposition.

We have talked from time to time about differences that may arise between you with respect to the ownership of your property and its desired disposition, particularly in view of your respective separate families. Such differences, under our ethical rules, do not prevent me from continuing to represent both of you. Of course, if conflicts of interests arise, ordinarily one lawyer cannot represent both of you, and it might be preferable for each of you to have separate independent counsel so as to avoid the possibility that advice to one is influenced by representation of the other. Nevertheless, you have during the years, and now have expressed your continued interest in having me represent both of you notwithstanding the foregoing explanation.

Although it is doubtful that it will happen, if conflicts do arise of such a nature that it is impossible for me to perform my obligations to each of you, I would withdraw from continued dual representation and advise one or both of you to obtain independent counsel. It is, of course, implicit in such dual representation that there will be a complete and free disclosure and exchange of all information that I receive from either one of you with the other and that such information shall not be confidential information from both of you or from only one of you.

I am sorry to belabor this point but increasing attention is being given in law these days to the subject of dual representation and potential conflicts of interest, which causes me to believe that this letter is timely and appropriate. Assuming that you are satisfied with my continuing representation of each of you and both of you, and mindful of what I have said above, I would appreciate your each signing the enclosed copy of this letter and returning it to me for placing in our files. A previously addressed and post marked envelope is enclosed for your convenience.

Should you have any questions concerning the purpose of this letter or any aspects of it, please feel free to call me.

Sincerely,

(Name of attorney)

I have read the foregoing letter, understand the same, consent to the disclosure and exchange of all information received by you from either one of us, with the other one of us, and consent to representing each and both of us in the aforementioned estate planning services.

Dated: _____, 19_____

Husband

Wife

CHAPTER 3

BASIC WILL PROVISIONS

INTRODUCTION AND DIRECTIONS FOR USE

The form provisions included in this chapter were selected because they will, in various combinations, meet the needs of many military personnel. The legal assistance officer using this chapter to formulate a client's will must be mindful of the hazards inherent in form provisions. No form provision can be expected to fulfill every need. Although the provisions included here will meet some needs, their primary purpose is to stimulate the drafter's thought processes and serve as a first step in the decision concerning just what is needed in a particular client's will. The final step must always be a careful evaluation of the suitability of each word chosen in light of that client's expressed desires and needs.

The attorney using this chapter must also keep in mind that the form provisions in this chapter are out of context. For example, the use in a will of a simple phrase such as "If my wife does not survive me, then to my children in equal shares" is subject to different interpretations unless the terms "survive" and "children" are defined in the same document. Again, only a word by word analysis of what each provision does--and does not do--will allow the drafter to produce a correct instrument.

- A. Introductory Clause
- B. Revocatory Clause
- C. Payment of Debts and Taxes
- D. Specific Disposition of Property
 - 1. Specific bequest of item of personal property.
 - 2. Specific bequest of item of personal property with contingent and alternative disposition provisions.
 - 3. Pecuniary legacy provision.
 - 4. Pecuniary legacy provision with contingent and alternative disposition provisions.

5. Provision for specific bequest of stock.
 6. Specific devise of interest in family home to surviving spouse.
 7. General anatomical gift clause.
 8. Clause for multiple specific bequests.
- E. Definitions
- F. General Disposition of Property
- G. Residuary and Contingent Beneficiary Clauses
1. General residuary clause for children.
 2. General residuary clause for nonspecific beneficiaries.
 3. General residuary clause for children with alternate disposition to both sets of parents if children have predeceased testator.
 4. General residuary clause for children (names not specified, equal shares, no provision for heirs and assigns).
 5. General residuary clause for children (names not specified, provision for heirs and assigns).
 6. General residuary clause for children (names not specified, equal shares, provision for specified alternate contingent beneficiaries).
- H. Appointment of Executor
- I. Appointment of Guardian
1. General guardianship provision.
 2. Guardianship provisions for children of prior marriages.
 - a. Guardian only.
 - b. Guardian and alternate guardian.
- J. Survivorship and Simultaneous Death Clauses

- K. Bequest to Minor under UGMA
- L. Pour Over Provision
- M. Military Survivor's Benefit Provision
- N. Right of Revocation for Reciprocal/Mutual Wills.
- O. Clause for intentional omission of potential claimants.
- P. Anatomical Gift.
- Q. Living Will
- R. Signature
- S. Attestation Clause
- T. Self-Proving Provision
- U. Testamentary Trust Provisions
 - 1. Contingent Trust for Children (separate trust for each child; termination at a specified age).
 - 2. Contingent Trust for Children (combined trust with prior distributions accountable against beneficiaries' share; termination at a specified age as to each beneficiary).
 - 3. Contingent Trust for Children (combined trust, prior distributions not accountable against beneficiaries' share; termination when youngest child reaches specified age).
 - 4. Alternate Distribution of Contingent Trust Property (trust principal distributed in increments at specified ages).
 - 5. Family trust with income "sprinkled" among wife and children (trust for life of children).
 - 6. Contingent Trust for children (short form).

A. INTRODUCTORY CLAUSE

I, _____, legally domiciled and resident in _____, now (in the active) (retired from the) military service of the United States, (and temporarily residing in _____), being of sound and disposing mind and not acting under any duress, fraud, or undue influence of any person, publish and declare this instrument as my LAST WILL AND TESTAMENT.

B. REVOCATORY CLAUSE

I hereby revoke all prior wills and codicils made by me.

C. PAYMENT OF DEBTS AND TAXES

I direct that all of my personal debts be paid from my estate prior to distribution if the Executor(rix) so desires, otherwise such debts will be apportioned to each devisee and legatee according to his or her share.¹

Unless specifically provided otherwise, debts secured by any property shall not be required to be exonerated, but shall pass with the property.

OR

Debts secured by any property may be paid prior to property distribution or passed with the property as my Executor(rix) in his (her) discretion may decide.

Taxes, excepting inheritance taxes levied on the devisees and legatees, shall be paid from the residuary portion of my estate.²

¹Because every jurisdiction requires a testator's debts to be paid as a matter of law, no mention of debts need be made at all except in the situation where a creditor is also a legatee. A debt clause in the creditor-legatee situation is used to avoid confusion over whether the bequest is intended as payment of a debt. If a debt clause is used in any other situation, it should be carefully tailored to meet specific needs.

²A clause directing the payment of taxes is unnecessary unless, as in this provision, it is included to insure tax payment comes from a specific part of the estate so other bequests, e.g., a marital deduction bequest, will not be reduced by a pro rata tax payment.

D. SPECIFIC DISPOSITION OF PROPERTY

1. Specific bequest of item of personal property.

I give and bequeath to _____, if he/she shall survive me, (e.g., my gold watch).

2. Specific bequest of item of personal property with contingent and alternative disposition provisions.

I give and bequeath to _____, if he/she shall survive me, (e.g., my gold watch). If he/she shall not survive me, then I give and bequeath said (my gold watch) to _____, if he/she shall survive me. If he/she shall not survive me, such property shall be added to and disposed of pursuant to the provisions of Item _____ (usually the residuary provision) herein.

3. Pecuniary legacy provision.

I give and bequeath to _____, if he/she shall survive me, the sum of _____.

4. Pecuniary legacy provision with contingent and alternative disposition provisions.

I give and bequeath to _____, if he/she shall survive me, the sum of _____. If he/she shall not survive me, then I give and bequeath said sum to _____, if he/she shall survive me. If he/she shall not survive me, such property shall be added to and disposed of pursuant to the provisions of Item _____ (usually the residuary provision) herein.

5. Provision for specific bequest of stock.

I give and bequeath to _____, if he/she shall survive me, _____ of the stock of _____ or of any successor or resulting corporation of such corporation which I own at the time of my death.³

³This is constructed to avoid interpreting the provision as a demonstrative legacy (i.e., "I bequeath 500 shares of Y Corporation"). If the testator divested himself of the stock prior to his death, under a demonstrative legacy provision, the executor would be obligated to distribute to the beneficiary property of equivalent

6. Specific devise of interest in family home.

I give and devise to (my wife), if she shall survive me, any interest which I own at the time of my death in the house and lot located at (address), or if I have no interest in said house and lot at the time of my death, any interest I own at the time of my death in the house and lot which I occupy as my residence at the time of my death.⁴

7. General anatomical gift clause.

Desiring that my body or any part thereof be made available upon my death for transplant or for storage until it can be used for transplanting, I give and donate my body to _____ (name) _____, _____ (address) _____.

8. Clause for multiple specific bequests.

I hereby give, devise and bequeath all of my estate, including all property of which I may die seized and possessed, or to which I may be entitled at the time of my decease, of whatsoever kind and nature, be it real, personal or mixed, wherever it may be situated, as follows:

- a.
- b.

value. If the provision noted here is used, the bequest would be adeemed and inoperative.

'A specific devise of the family home to the surviving spouse is only necessary when the spouse is not receiving a fee interest in the entire estate by general devise and bequest. If used, the alternative provision shown here is recommended because of the transitory nature of military life.

⁵Since the will may not be read prior to disposition of the body, instructions of this nature should be given to a family member. See Paragraph P for a more detailed anatomical gift provision.

E. DEFINITIONS

The term "children" as used in this will includes children hereafter born to or adopted by me, [and any minor stepchildren living with me at the time of my death]⁶ as well as the children I now have.

The term "minor" as used in this will means a person under [twenty-one (21)] years of age.

The term "descendants" as used in this will means the immediate and remote lawful, lineal descendants by blood or adoption of the person referred to who are in being at the time they must be ascertained in order to give effect to the reference to them.

The term "issue" as used in this will means all persons who are descended from the person referred to, either by legitimate birth to or legal adoption by that person, or any of that descendant's legitimately born or legally adopted descendants.

The term "per stirpes" as used in this will means the property shall be distributed in equal shares among my living children and the descendants of my deceased children. The latter taking by right of representation.

F. GENERAL DISPOSITION OF PROPERTY

I give, devise and bequeath all of my estate and property of which I may be seized or possessed or to which I may be entitled at the time of my death, wherever situated or of whatever nature, be it real, personal or mixed, including lapsed legacies and any property over which I may have a power of appointment⁷ to _____ (my wife, . . .) _____ (my brother, . . .) _____

as her (his) sole and absolute property if she shall survive me.

⁶Any provision a testator(rix) desires to make for stepchildren must be expressly stated. Few, if any, states define children to include stepchildren as a matter of law.

⁷The attorney should examine any known power of appointment and determine whether it should be exercised or not. Instruments creating powers of appointment frequently state that the power can only be exercised by specific reference to the creating instrument.

G. RESIDUARY AND CONTINGENT BENEFICIARY CLAUSES.

1. General residuary clause for children.

In the event that _____ (spouse) or (primary beneficiary) _____ shall not survive me, I give, devise and bequeath all of the said rest, residue and remainder of my estate and property absolutely and forever, share and share alike, to _____ (my children) or (contingent beneficiary) _____ and any child or children that may be born to me (us) or adopted by me (us) hereafter who shall survive me; but if any of my (our) children or adopted children shall not survive me, then to the descendants of such child or children who may be living at my death, such descendants to take per stirpes and not per capita; in the event that any of my (our) children or adopted children shall not survive me and also shall not be survived by descendants, then the share of any such child or children shall be divided among my (our) surviving children and adopted children and the surviving descendants of any of my (our) children who have not survived me, such descendants to take per stirpes and not per capita.] If neither my _____ (spouse) or (primary beneficiary) _____

[nor any child, adopted child or descendant of mine] shall survive me, then I give, devise and bequeath all of the said rest, residue and remainder of my estate and property, absolutely and forever, (in equal shares), to _____ (contingent beneficiary) _____

(or such of them as shall survive me).

[Language in brackets applies only to married testator with children.]

2. General residuary clause for nonspecific beneficiaries.

In the event that _____ predeceases me or that our deaths occur simultaneously or approximately so, or in the same disaster or calamity, or under circumstances causing doubt as to which of us survived the other, or in the event that _____ does not survive me by thirty days, I hereby give, devise and bequeath unto _____ all of my estate, be it real, mixed or personal property, wherever situated, to be _____ absolute property.

3. General residuary clause for children with alternate disposition to both sets of parents if children have predeceased testator.

In the event that _____ predeceases me or that our deaths occur simultaneously or approximately so, or in the same disaster or calamity, or under circumstances causing doubt as to which of us survived the other, or in the event that _____ does not survive me by thirty days, I hereby give, devise and bequeath all of my estate, be it real, mixed or personal property, wherever situated, unto _____ and any other surviving child or children of this marriage, natural or adopted, to be their absolute property, in equal shares, share and share alike. However, should neither the said _____ nor any of my children survive me, then I give, devise and bequeath one-half (1/2) of the rest, residue and remainder of my estate, unto _____ or the survivor of them, if none, unto their descendants; and one-half (1/2) thereof unto _____ or the survivor of them, if none, unto their descendants, to be their absolute property.

4. General residuary clause for children (names not specified, equal shares, no provision for heirs and assigns).

In the event that the said _____ predeceases me or that our death occurs simultaneously or approximately so, or in the same disaster or calamity, or under circumstances causing doubt as to which of us survived the other, or in the event that _____ does not survive me by thirty days, I hereby give, devise and bequeath unto any surviving child or children of this marriage, natural or adopted, all of my estate, be it real, mixed or personal property, wherever situated, to be their absolute property, in equal shares, share and share alike.

5. General residuary clause for children (names not specified, provision for heirs and assigns).

In the event that _____ predeceases me, or that our deaths occur simultaneously or approximately so, or in the same disaster or calamity, or under circumstances causing doubt as to which of us survived the other, or in the event that _____ does not survive me by thirty days, I hereby give, devise and bequeath unto any child or children of this marriage, natural or adopted, their heirs and assigns, to be their absolute property, per stirpes and not per capita, all

of my estate, be it real, mixed or personal property, wherever situated.

6. General residuary clause for children (names not specified, equal shares, provision for specified alternate contingent beneficiaries.

In the event that _____ predeceases me or that our deaths occur simultaneously or approximately so, or in the same disaster or calamity, or under circumstances causing doubt as to which of us survived the other, or in the event that _____ does not survive me by thirty days, I hereby give, devise and bequeath unto any surviving child or children of this marriage, natural or adopted, all of my estate, be it real, mixed or personal property, wherever situated, to be their absolute property, in equal shares, share and share alike. However, should neither _____ nor _____ survive me, then my entire estate, and all the rest, residue and remainder thereof, I give, devise and bequeath unto _____ in equal shares.

H. APPOINTMENT OF EXECUTOR

I hereby appoint⁸ _____ of _____ as Executor(rix) of this my LAST WILL AND TESTAMENT, (and I request that he (she) be permitted to serve without bond or surety thereon and without the intervention of any court or courts, except as required by law).⁹ In addition to any powers and discretions granted my Executor(rix) by law, I hereby authorize and empower my said Executor(rix), in his (her) absolute discretion, to sell, exchange, convey, transfer, assign, mortgage, pledge, lease, or rent the whole or any part of my real or personal estate, to invest, reinvest, or retain investments of my said estate, to perform all acts and to execute all documents which my said Executor(rix) may deem necessary, convenient or proper in regard to my property.

⁸Some states do not permit the appointment of a non-resident executor. See Chapter 4 of this text for specific state law.

⁹Provision provides for appointment of executor without bond. Some states, e.g., Texas, allow executors to be appointed as independent executors. See Chapter 4 for specific state laws.

In the event that my Executor(rix) shall predecease me or shall for any reason refuse or be unable to serve or to continue serving as Executor(rix) hereof, then I hereby appoint _____ of

as Executor(rix) in his (her) stead, to serve without (with) bond or (and) surety and with the same powers and authority.¹⁰

If it becomes necessary to have ancillary administration of my estate in any jurisdiction where the Executor is unable or does not desire to qualify as ancillary legal representative, I appoint as such ancillary legal representative such individual or corporation as my Executor shall designate, in writing. I direct that any balance of my property remaining after such ancillary administration be delivered, to the extent permitted by law, to my Executor for disposition in accordance with the terms of this Will. I direct that all of the powers or privileges and immunities granted to my Executor hereunder shall also apply to any such legal representative.¹¹

I further direct that such ancillary legal representative shall not be required to give any bond or other security for the faithful performance of his or its duties, or if any bond is required, neither he nor it shall be required to give any surety thereon.¹²

¹⁰Provision provides for an alternate executor without bond. If a natural person is nominated as primary executor, at least one alternate should be named.

¹¹Provision gives executor the authority to appoint an ancillary executor for property in a state requiring a resident executor. Ancillary administration is often necessary for military families because of real property owned in states other than the state of domicile.

¹²Provision waives bond requirement for ancillary executor.

I. APPOINTMENT OF GUARDIAN

1. General Guardianship Provision.

In the event that I shall die leaving a minor child or children surviving me (and my said wife (husband) shall not survive me), I hereby appoint¹³

of _____
as testamentary guardian of the person (and property) (and trustee of the property)¹⁴ of each minor child of mine who shall survive me, during his or her minority. The guardian (trustee) to serve without bond or surety and without the intervention of any court or courts, except as required by law.

If _____ dies, resigns, or is otherwise unable to act, then I appoint _____ as testamentary guardian of the person and property of such minor child or children and direct that he shall also serve without bond.¹⁵

2. Guardianship provisions for children of prior marriages.

a. Guardian only.

In the event that my former (husband/wife), _____, predeceases me or dies under circumstances specified elsewhere in this will, or is unable or unwilling to care for my (children/son/daughter, _____ (names) _____):

I hereby nominate, constitute and appoint _____ guardian(s) over the persons and _____

¹³Some states do not permit appointment of a non-resident guardian. See Chapter 4 of this text for specific state law.

¹⁴The same person does not have to be named guardian of both the person and the property of a minor -- though a combined guardian is the norm. In many states, flexibility and economy can be improved by naming a person trustee of a minor's property instead of guardian. See also provision XI, infra, for a method which allows the guardian of the child's person to be custodian of the child's property under the Uniform Gifts to Minors Act.

¹⁵Provision provides for appointment of an alternate guardian. At least one alternate should always be named.

the property of my children of my former marriage to the said _____ until such time as the children reach the age of majority. The guardianship shall expire for each child when he or she reaches the age of majority, without the necessity of waiting until all the children reach the age of majority.

I direct that the said _____ shall not be required to give any bond or other surety in connection with qualifying or acting in this capacity.

b. Guardian and alternate guardian.

In the event that my former (husband/wife), _____, predeceased me, or is unable or unwilling to care for my _____, children, son/daughter _____ (names) _____, I hereby nominate, constitute and appoint _____ guardian and _____ alternate guardian over the person(s) and property of the said (name of child/children), until such time as _____ reach(es) the age of majority. I direct that the said _____ and _____ shall not be required to give any bond or other surety in connection with qualifying or acting in this capacity.

J. SURVIVORSHIP AND SIMULTANEOUS DEATH CLAUSES

A. Wherever in this my LAST WILL AND TESTAMENT it is provided that any person shall benefit hereunder if such person shall survive me, that person shall be deemed not to have survived me if he or she shall die (within thirty (30) days after my death).¹⁶

B. In the event that any beneficiary under this my LAST WILL AND TESTAMENT and I shall die at the same time, or under such circumstances that it is difficult or impossible to determine which of us died first, such beneficiary shall be deemed to have predeceased me.¹⁷

¹⁶Survival may be conditioned on any period up to 180 days without adverse legal consequences. The time periods most frequently used are 30, 60, or 90 days.

¹⁷Provision establishes a presumption that testator(rix) survives spouse and other beneficiaries or legatees. This clause is used to prevent double probate of assets due to multiple deaths resulting from a common disaster. The phrase "or die in a common disaster with me", which is found in many formbook simultaneous death clauses, is not

C. If my (wife) and I die under such circumstances that it is difficult or impossible to determine who died first, it shall be presumed that my (wife) survived me.¹⁸

K. BEQUEST TO MINOR UNDER UGMA

If any beneficiary to this Will is a minor, I direct that his or her share be given to his or her guardian as custodian under the Uniform Gifts to Minors Act of the state to be managed, held, and distributed in accordance with the provisions of said Act.¹⁹

L. POUR OVER PROVISION

(If my spouse does not survive me,) I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description, wherever situated and whether acquired before or after the execution of this Will, to _____ as Trustee under that certain Trust Agreement between myself as Settlor and _____ as Trustee executed prior to the execution of this Will on _____

recommended for use in military wills because a few states have held the phrase to create an indefinite survival requirement. In those states that have adopted the Uniform Simultaneous Death Act, provisions creating the presumption of the testator's survival are unnecessary. Remember the presumption created by this clause will only be given effect if the actual order of death cannot be factually determined.

¹⁸Provision establishes a presumption that wife survived testator. This clause is used when a greater tax advantage can be achieved by taking the marital deduction than by avoiding double probate in cases of simultaneous death. With the increased unified credit enacted under the Economic Recovery Tax Act of 1981, use of this presumption will rarely be necessary for military estates. See Chapter 2 of this text.

¹⁹Provision gives property of minor to guardian of minor's person to hold as custodian under UGMA. The UGMA custodianship is more flexible and less expensive than most statutory guardianships.

CAVEAT: Some states do not allow testamentary dispositions under UGMA. See Chapter 4 of this text for specific state law.

_____. The Trustee shall add the property bequeathed and devised by this Item to the corpus of the above described Trust and shall hold, administer and distribute said property in accordance with the provisions of the said trust Agreement, including any amendments thereto made before my death.²⁰

[In the event for any reason the bequest and devise under Item _____ is ineffective and invalid then I hereby give, devise and bequeath the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situated and whether acquired before or after the execution of this Will, to my Trustee hereinafter named to be held, administered and distributed as hereinafter provided.]²¹

M. MILITARY SURVIVOR'S BENEFITS PROVISION

I have served in the Armed Forces of the United States. Therefore, I direct my Executor or Executrix to consult the legal assistance attorney at the nearest military installation to ascertain if there are any benefits to which my dependents are entitled by virtue of my military affiliation at the time of my death. Regardless of my military status at the time of my death, I direct my Executor or Executrix to consult with the nearest Veterans Administration and Social Security Administration office to ascertain if there are any benefits to which my dependents may be entitled.²²

²⁰Provision gives the residue of the estate to an inter vivos trust created during the testator's lifetime, to be administered in accordance with the terms of the trust. The most frequent use of this clause for military families is to pour-over the residuary estate into a contingent unfunded life insurance trust for minor children. Some state laws regarding pour-over provisions are quite restrictive. See note 25, infra, and accompanying text.

²¹The drafter can protect against the possibility that a pour over provision to an inter vivos trust may be declared invalid under state law by including in the will a testamentary trust which "mirrors" the inter vivos trust. The provision shown is a lead-in clause for a "mirror" testamentary trust.

²²Provision alerts executor(rix) to the possible existence of military survivor benefits.

N. RIGHT OF REVOCATION FOR RECIPROCAL/MUTUAL WILLS.

Although my wife/husband, and I are making wills with similar provisions, each of us does so only because we are presently of one mind concerning disposition of our estate; our Wills are not contractual, reciprocal, or dependent upon one another; and I explicitly retain the right to change or revoke my Will at any time, either before or after the death of my wife/husband.

O. CLAUSE FOR INTENTIONAL OMISSION OF POTENTIAL CLAIMANTS.²³

Except as otherwise provided in this, my LAST WILL AND TESTAMENT, I have intentionally omitted to provide herein for any other relatives or for any other person, whether claiming to be an heir of mine or not.

P. ANATOMICAL GIFT.

Realizing that after my death my body or parts of my body may be of value for medical research, education, therapy, transplantation, or otherwise; I hereby make the anatomical gift, if medically acceptable, to take effect upon my death. My body or any needed organs or parts of my body should be made available immediately after my death to a physician or a group of physicians, a hospital, a medical school, an organ bank or storage facility, or other medical institution for medical research, medical education, therapy, transplantation, and/or other medical uses authorized by law. PROVIDED, HOWEVER, my executor shall have authority to nullify or limit this gift as he in his discretion shall see fit. However, I have decided to make such gift after careful consideration and hope my executor and family will feel morally bound to follow its mandate. I recognize that this appears to place a heavy responsibility upon my executor; but it is with the intention of relieving

²³Care should be exercised in using this clause when the testator desires to omit a spouse or natural or adopted child from the will. Any children should be specifically excluded by name. In community property states, a spouse may generally be excluded from sharing in the testator's specific estate, but not the community estate. In common law jurisdictions, a spouse generally may not be disinherited. See chapter 4.

others of such responsibility and of placing it upon myself in accordance with my strong convictions, that this gift has been made.

Q. LIVING WILL.²⁴

Death is as much a reality as birth, growth, maturity and old age--it is the one certainty of life. If the time comes when I, _____, can no longer take part in decisions for my own future, let this statement stand as an expression of my wishes, while I am still of sound mind. If the situation should arise in which there is no reasonable expectation of my recovery from physical or mental disability, I request that I be allowed to die and not be kept alive by artificial means or "heroic measures." I do not fear death itself as much as the indignities of deterioration, dependence, and hopeless pain. I, therefore, ask that medication be mercifully administered to me to alleviate suffering even though this may hasten the moment of death. This request is made after careful consideration. I hope you who care for me will feel morally bound to follow its mandate. I recognize that this appears to place a heavy responsibility upon you, but it is with the intention of relieving you of such responsibility and of placing it upon myself in accordance with my strong convictions, that this statement is made.

R. SIGNATURE

IN WITNESS WHEREOF I have hereunto set my hand and seal in the presence of the witnesses whose names appear hereafter, published the _____ day of _____ 19____.

(Testator(trix))

S. ATTESTATION CLAUSE

On this _____ day of _____, 19____

²⁴Many states provide statutorily for living wills as separate documents. There appears to be no prohibition against including such language in a testamentary document. However, the same considerations apply as for anatomical gifts - make sure relatives are aware of these provisions. For a different form, see Appendix I.

testator, personally Published and Declared the foregoing instrument, as and for his Last Will and Testament, in the presence of each of us and all of us together, who, at his request, in his presence, and in the presence of each other, also signed the said instrument as witnesses. We further state that each of us believes that at the time he executed the foregoing instrument he was of sound mind and memory, of lawful age, and did so execute it as his own free act and deed and not under the unlawful influence of any person.

_____ SSAN: _____
PERMANENT ADDRESS _____

_____ SSAN: _____
PERMANENT ADDRESS _____

_____ SSAN: _____
PERMANENT ADDRESS _____

T. SELF-PROVING PROVISION

For the statutory provision of a particular state, see the specific state in Chapter 4 of this text.

For those states which do not have a specific statutory format, the following provision can be used:

THE STATE OF _____
COUNTY OF _____

We, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses in the presence and hearing of the testator, signed the will as witness and that to the best of his

knowledge the testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn and acknowledged before me by _____ the testator, subscribed and sworn before me by _____, and _____ witnesses, this _____ day of _____ A.D., _____.

(SEAL)

(SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)

U. TESTAMENTARY TRUST PROVISIONS.

1. Contingent trust for children. (Separate trust for each child; termination at a specified age)

Notwithstanding the preceding provisions of this Will, if any part of my estate shall, upon partial or final termination of my estate, be distributable to any beneficiary who has not reached the age of [twenty-one (21) years] then such portion shall be retained by my [trustee] as a separate trust for the benefit of any such beneficiary, and distributed upon the following terms and in accordance with the powers and duties herein set out. In the event my Trustee should fail or cease to serve as Trustee for any reason, then said portion shall be retained by my [alternate trustee _____], upon the same terms and conditions and with the same powers and duties given my Trustee.

a. I direct that my Trustee serve independent of court supervision, and that no bond or other security be required.

b. The Trustee shall have all of the powers and duties as provided by the laws of the state in which this

Will is probated, and also the following powers for each separate trust herein created: to accumulate all or part of the income of such trust, or to distribute so much of the income and principal of such trust to or for the benefit of the beneficiary as the Trustee, in his sole judgment and discretion, deems necessary for the maintenance, support, health and education (including primary, secondary and college) of the beneficiary, taking into consideration the person's age, any income the person may have from other sources to the knowledge of the Trustee, and any other factors deemed relevant by the Trustee. It is my intention that the beneficiary be enabled, insofar as possible, to maintain the standard of living to which he or she is accustomed. The Trustee shall make all distributions directly to the beneficiary's guardian of the person, or, if the beneficiary has attained the age of majority as determined by the law of the state in which this Will is probated, directly to the beneficiary. Upon making a distribution to the beneficiary's guardian of the person, the Trustee may specify the purpose of such payment and may require an accounting from the said guardian of the person, but the receipt of said payment by the guardian of the person shall constitute a full discharge to the Trustee for all monies so paid.

c. Each separate trust herein created shall terminate when the beneficiary attains the age of _____ and the remaining principal and undistributed income of such trust shall be distributed by the Trustee to the beneficiary, in fee simple. Before making any such distribution, the Trustee shall have the right to require any release from a beneficiary that the Trustee deems it necessary to secure.

d. If any beneficiary above named should die before attaining the age of _____, then all of the assets remaining in such deceased beneficiary's trust share shall pass to the surviving beneficiary, or equally to the surviving beneficiaries under this will. If the surviving beneficiary or beneficiaries are then under the age of _____, such share shall not be distributed to the said surviving beneficiary or beneficiaries outright, but shall be added to the said beneficiary's or beneficiaries' trust share(s) as an integral part thereof, to be administered and distributed in accordance with all of the terms and conditions applying thereto. If all of the beneficiaries of a trust created under this will provision should die before the youngest beneficiary has attained the age of _____, then all of the assets remaining in any and all of the

trusts herein created shall be distributed, free of trust, to _____.

e. No part of the income or principal of any trust estate shall ever be anticipated, transferred, or assigned by any beneficiary or distributee, or subjected to any judicial process against any beneficiary or distributee before the same has been paid. No part of the interest of any beneficiary or distributee shall in any event be subject to sale, hypothecation, assignment, or transfer, nor shall any part of such principal or income be seized, attached, or in any manner be subject to judicial proceedings against any beneficiary or distributee on account of the debts, assignments, sale, divorce, or other obligations of any beneficiary or distributee.

f. For the Trustee's services rendered in administering each trust herein created, he shall be entitled to receive a fair and reasonable fee, which shall be in lieu of all statutory fees, but in no case shall said fee exceed the customary and prevailing fee charged by corporate fiduciaries in the county where the trust is being administered for the rendering of a similar service at the time.

g. Notwithstanding anything in this Will to the contrary, no trust herein created shall continue beyond twenty-one (21) years after the death of the last to die of those beneficiaries, contingent or otherwise, who were living or conceived at the time of my death. Any trusts still in effect at the expiration of such maximum period shall then terminate and the trust assets shall be distributed, outright, to the person for whom such trust was continued.

2. Contingent Trust for Children (Combined trust, prior distributions accountable against beneficiaries' share, termination at specified age as to each beneficiary)

In the event that the said _____ predeceases me or that our deaths occur simultaneously or approximately so, or in the same disaster or calamity, or under circumstances causing doubt as to which of us survived the other, or in the event that _____ does not survive me by thirty days, I hereby give, devise and bequeath all of my estate to my trustee, _____, to be held in trust for _____ and for any other child or children of my marriage to _____, natural or adopted, or the survivors thereof. The income and corpus of the trust is to be used for the care, maintenance, support and education of the

beneficiary(ies) and the trustee shall have full discretion to distribute the income and corpus in whatsoever proportions and amounts _____ deem fit. Each distribution shall be charged against each beneficiary's account in computing said beneficiary's share of the corpus and of subsequent income of the trust, except that distributions for medical expenses shall not be so charged. The trustee shall have complete discretion in allocating principal and income, investing, managing, leasing, improving, encumbering, pledging, selling, and liquidating assets under the standard of a reasonable man, including investing in stocks. The trustee shall not be required to serve with any bond. If any beneficiary dies before reaching age _____, the entire trust shall not terminate because of such death, but the surviving beneficiary(ies) shall become the sole beneficiary(ies). The trust shall terminate as to each beneficiary when he or she reaches age _____ without the necessity of waiting until all the beneficiaries reach age _____. As soon as thereafter practicable, the trustee shall distribute to said beneficiary his or her proportionate share of the trust property, free and clear of trust.

3. Contingent Trust for Children (Combined trust, prior distributions not accountable against beneficiaries' share, termination when youngest child reaches specified age)

ARTICLE _____ RESIDUARY

All the rest, residue and remainder of my property and estate, real and personal, of whatever nature and wherever situated, including any property hereinbefore mentioned but not effectually disposed of, I give to my husband/wife, if he/she survives me. If he/she does not survive me, I give such property to my issue me surviving, by right of representation.

Notwithstanding the foregoing, if my husband/wife does not survive me and any child of mine is under the age of _____ years at the time of my death, all such property shall be distributed to my trustee hereinafter named, to be held, administered and distributed as hereinafter provided in the Article of this will entitled Trust for Children.

ARTICLE _____ TRUST FOR CHILDREN.

The purpose of this trust is to provide for the support, maintenance, medical expenses, education (including a secondary school, four years of college or

equivalent preparation in business, technical or trade training, and post-graduate college education) and general welfare of my surviving children and to provide for the distribution of my property as stated in the following paragraphs.

Such of the income and corpus as is needed (even to the exhaustion of the trust) shall be applied or distributed by my trustee, in cash or in kind, for the comfortable support and education of each beneficiary. Said distribution shall be made to those persons and in such manner and amounts as my trustee, in its unrestricted discretion, believes will fulfill the purposes of the trust. My trustee is authorized to make such distributions directly to said beneficiary, to his guardian or to any other person in behalf of such beneficiary without the trustee being liable to see to the application thereof. Amounts so distributed shall not be taken into account in making the division of the trust as provided below. It is my expectation and intention that if guardians of the person are appointed for a minor child, my trustee will exercise the foregoing power to protect the guardians, to the extent possible, from suffering any significant financial burden by reason of their appointment.

When there is no living child of mine under the age of _____ years, my trustee shall distribute the remaining trust assets to my then living issue by right to representation, or failing such issue, as provided in Article ____ below.

If the beneficiary of this trust dies before the principal of this trust is fully distributed, my trustee may in its discretion pay from the trust assets expenses of last illness, funeral, and related expenses of the beneficiary.

The interest of any beneficiary hereunder shall not be subject to assignment, alienation, pledge, attachment, or claims of creditors of such beneficiary. If the interest of any beneficiary should, because of any debt incurred by, or other claim against, such beneficiary or any seizure under any legal, equitable or other process, become payable or likely to become payable to any person other than such beneficiary, my trustee shall withhold payment to such beneficiary until such assignment, transfer, encumbrance, anticipation, or other disposition, writ or legal process is cancelled or withdrawn in such manner as shall be satisfactory to my trustee; and until such time my trustee may use and pay all or part of the income and principal as my trustee may

deem advisable directly for the support and maintenance of the beneficiary.

Notwithstanding any other provision of this will, if the assets of this trust are reduced to a sum which, in my trustee's discretion, would not be economical to continue in trust, then my trustee may pay over the trust assets to my then living issue by right of representation, provided that if a distributee is a minor, his share shall be paid to, and held, administered and distributed by, trustee as custodian for said minor under the Uniform Gifts to Minors Act of either the State in which the beneficiary or custodian resides, or any other State of competent jurisdiction, as that Act exists at the time of my death and, for this purpose, that Act is incorporated by reference.

If the proceeds of any policy of life insurance or pension or profit sharing plan are paid to my trustee pursuant to the terms of such policy or plan, I direct my trustee to add such proceeds to the principal of the trust hereby created and to hold, administer and dispose of such proceeds as part of said principal.

4. Alternative Distribution Of Contingent Trust Property (Trust principal distributed in increments at specified ages).

When the eldest of my living children reaches the age of (22), my trustee shall divide the property of the trust into equal shares:

- a. One share for each of my children who is then living, and
- b. One share for the then living descendants, collectively, of each deceased child of mine. My trustee is instructed to then distribute the shares of the descendants of my deceased children to them per stirpes.

My trustee shall hold and administer in trust each share set aside for a child of mine as follows:

When each child of mine reaches the age of (22) years, the trustee shall distribute to the child one-third of the share set aside and administered for him. When the child reaches age (28) years, my trustee shall distribute to the child one-half of the remaining principal and accumulated interest of the share set aside for him. When the child reaches the age of (35) years

my trustee shall distribute to him the remaining principal and interest in the share set aside for him.

5. Family Trust With Income "Sprinkled" Among Wife And Children (Trust for life of children)

ARTICLE _____. RESIDUARY.

I dispose of all the rest, residue, and remainder of my property and estate, real and personal, of whatever nature and wherever situated, including any property hereinbefore mentioned but not effectually disposed of (but excluding any property over which I may have a power of appointment, it being my intention not to exercise any such power), as follows:

a. If my wife/husband, _____, survives me, I give and devise my residuary estate to my trustees IN TRUST, to invest and reinvest and at any time or from time to time to pay out of the net income such amount or amounts (whether equal or unequal, and whether the whole or a lesser amount) as my trustees (other than any beneficiary) may in their sole discretion determine to such one or more of my wife and my descendants as my trustees (other than any beneficiary) may in their sole discretion select. In exercising this discretionary power, my trustees may but will not be required to consider the needs and desires of my wife/husreinvest and at any time or from time to time to pay out of the net income such amount or amounts (whether equal or unequal, and whether the whole or a lesser amount) as my trustees (other than any beneficiary) may in their sole discretion determine to such one or more of my wife and my descendants as my trustees (other than any beneficiary) may in their sole discretion select. In exercising this discretionary power, my trustees may but will not be required to consider the needs and desires of my wife/husband. Any net income not paid out shall be added to the trust principal.

b. Upon my wife/husband's death, if issue of mine survive her/him, my trustees shall divide and set apart all property then belonging to the principal of the trust into as many equal shares as will allow them to set apart one such share for each child of mine who shall survive my wife/husband and one such share for each deceased child of mine who is survived by then living issue.

c. Each share so set apart for a child of mine shall be held by my trustees IN TRUST, to invest and reinvest and to pay the net income to such child during his or her life at least quarter-annually, and at any

time or from time to time to pay to such child so much of the principal, whether the whole or a lesser amount, as my trustees may in their sole discretion determine. In exercising this discretionary power, my trustees may but need not consider any other resources of the child. Upon the death of the child my trustees shall distribute all property then belonging to the principal of the trust, together with all income then on hand or accrued, to such person or persons (other than the child, the child's estate, the child's creditors or the creditors of the child's estate), and in such estates, interests and proportions, as the child may, by a will specifically referring to this Article of this will, appoint. If the child shall fail to exercise, or shall not fully and effectually exercise, such power of appointment my trustees shall distribute all property not effectually appointed to the issue of the child him or her surviving, per stirpes, or, in default thereof, to my issue then living, per stirpes, or in default thereof, to (charity); provided that any property which would pass to a child of mine who is then entitled to the net income from another trust then held under this Article shall not pass to such child but instead shall be added to the principal of such other trust.

d. Each share so set apart for the issue of a deceased child of mine shall be distributed to such issue, per stirpes.

(Additional language may be added to direct holding such shares in trust for minors and to provide for distribution of income as it accrues or at a set age (i.e., 21)).

6. Contingent Trust For Children (Short form).

SIXTH. In the event that the said _____ predeceases me or that our deaths occur simultaneously or approximately so, or in the same disaster or calamity, or under circumstances causing doubt as to which of us survived the other, or in the event that _____ does not survive me by thirty days, I hereby give, devise and bequeath all of my estate to my trustee, _____, to be held in trust for _____. The income and corpus of the trust is to be used for the care, maintenance, support and education of the beneficiary and the trustee shall have full discretion to distribute the income and corpus in whatsoever amounts and at whatsoever times as _____ deems fit. The trustee shall have complete discretion in allocating principal and income, investing, managing, leasing, improving, encumbering, pledging, selling, and liquidating assets under the

standard of a reasonable man, including investing in stocks. The trustee shall not be required to serve with any bond. The trust shall terminate when said beneficiary reaches age _____. As soon as thereafter practicable, the trustee shall distribute to said beneficiary the trust property, free and clear of trust.

ALABAMA

STATUTE: Ala. Code tit. 43, § 43-1-1 et seq., Alabama Acts 1981, 1982.

INTESTATE DESCENT & DISTRIBUTION: Surviving spouse receives entire intestate estate if no children or parents. If children (all of whom are also issue of surviving spouse), spouse receives \$50,000 value plus one-half (1/2) the balance of the intestate estate. If children (but one or more not children of surviving spouse), spouse receives one-half (1/2) of the intestate estate. If parents but no children, spouse receives \$100,000 value plus one-half (1/2) the balance of the intestate estate. § 43-8-41 If no surviving spouse or a portion does not pass to surviving spouse, then to descendants as prescribed in statute. § 43-8-42. There is a requirement for any heir to survive the decedent by five (5) days. § 43-8-43. If time of death cannot be determined (decedent, heirs, both) and it cannot be established that potential heir has survived decedent by five (5) days, then it is deemed that the heir has failed to survive decedent for the required period. Rule applies to laws of intestate succession, homestead allowance and exempt property (§ 43-8-43) and law of wills (although terms of will may provide otherwise (§ 43-8-220)).

BASIC WILL REQUIREMENTS:

- (1) Age - 18, § 43-8-130.
- (2) Testamentary Capacity - person of sound mind, § 43-8-130.
- (3) Will must be in writing. § 43-8-131.
- (4) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 4-8-131.
- (5) Witnesses - 2. § 43-8-131.

INTERESTED WITNESS: A will or provision thereof is not invalid because it is signed by an interested witness. § 43-8-134.

ALABAMA

NUNCUPATIVE (ORAL) WILL: Prohibited (unless valid where executed), §§ 43-8-131; 43-8-135.

HOLOGRAPHIC WILL: Valid as an Alabama will only if it meets the execution requirements of § 43-8-131 (two witnesses). Holographic wills of nonresidents will be admitted to probate to transfer Alabama property if valid in decedent's domicile. § 43-8-135.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise. §§ 43-2-80, 43-2-81. NOTE: Executor must be at least 19 years old, must not have been convicted of an infamous crime, and must not be incompetent from interference, improvidence, or want of understanding. § 43-2-22.

Guardian - Bond required unless will provides otherwise. §§ 26-3-1, 26-3-3.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Probate Judges are authorized to issue letters testamentary to persons named as executors in wills regularly probated who are nonresidents, upon the same terms, conditions and requirements for residents. § 43-2-191.

Guardian - No statutory provision. But see *Watson v. White*, 216 Ala. 396, 113 So. 260 (1927). (Appointment of nonresident is not void, but irregular, and will stand until revoked.)

REVOCATION: A will may be revoked by subsequent will or by physical destruction with intent to revoke. § 43-8-136.

EFFECT OF SUBSEQUENT DIVORCE: Revokes all will provisions pertaining to ex-spouse. § 43-8-137. Decree of separation does not constitute a divorce for purposes of revocation of will provisions. A marriage to a former spouse revises will provisions if only revoked by operation of law. § 43-8-137.

SPOUSE'S RIGHT OF ELECTION: Dower and Curtesy abolished. Spouse may elect to take the lesser of (1) the whole of decedent's estate reduced by the value of the surviving

ALABAMA

spouse's separate estate or (2) one-third (1/3) of the decedent's estate. § 43-8-70, et seq. The right of election can be waived before or after marriage by a written contract agreement or waiver signed by the party waiving after full disclosure. § 43-8-72. Surviving spouse is entitled to homestead allowance, exempt property, and family allowance regardless of whether electing the forced share. § 43-8-74. Surviving spouse may retain possession of dwelling. § 43-8-114.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for transfers to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 19. § 35-5A-1 et seq.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 43-7-1 to 43-7-8.

SELF-PROVING PROVISION: Yes. § 43-8-132. For form, see next page.

CHOICE OF LAW: Testamentary disposition of property is determined by the state law selected by the testator unless applications of that law is contrary to Alabama law relating to elective share, exempt property, allowances or other public policy otherwise applicable to the disposition. § 43-8-221.

SMALL ESTATE ADMINISTRATION - Decedent must have been a state resident at death. Procedure applicable to estates not exceeding \$30,000 in value. Proceedings initiated by filing a petition in the probate judges office. Distribution of personal property only is permitted, with distribution to the surviving spouse being preferred. § 43-2-692.

ALABAMA

§ 43-8-132(a) 1984

ALABAMA SELF-PROVING CLAUSE - Form A

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

ALABAMA

State of _____

County of _____

Subscribed, sworn to and acknowledged before me by
_____, the testator and subscribed and
sworn to before me by _____,
and _____, witnesses,
this _____ day of _____, 19____.

(Seal)

(Signed)

Official Capacity of
Officer

Source:

Alabama Code § 43-8-132.

ALABAMA

§ 43-8-132(b) 1984

ALABAMA SELF-PROVING CLAUSE - Form B

State of _____

County of _____

We, _____, and _____,
the testator and the witnesses respectively, whose names
are signed to the attached or foregoing instrument, being
first duly sworn, do hereby declare to the undersigned
authority that the testator signed willingly (or
willingly directed another to sign for him), and that he
executed it as his free and voluntary act for the
purposes therein expressed, and that each of the
witnesses, in the presence and hearing of the testator,
signed the will as witness and that to the best of his
knowledge the testator was at that time 18 years of age
or older, of sound mind and under no constraint or undue
influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed
and sworn to before me by _____, and
_____, witnesses, this _____ day of
_____, 19____.

(Seal)

(Signed) _____

(Official capacity of
officer)

43-8-132(c)

ALABAMA SELF-PROVING CLAUSE - Form C

If the will is self-proved, as provided in this section, compliance with signature requirements for execution is conclusively presumed, other requirements of execution are presumed subject to rebuttal without the testimony of any witness, and the will shall be probated without further proof, unless there is proof of fraud or forgery affecting the acknowledgement or affidavit.

ALASKA

STATUTE: Alaska Stat. § 13.11.005 et seq.

INTESTATE DESCENT & DISTRIBUTION: If no surviving issue or parent of the decedent, the surviving spouse takes the entire estate. If no surviving issue but decedent survived by parent(s), the surviving spouse takes the first \$50,000 plus one-half the balance of the intestate estate. If decedent is survived by issue, all of whom are issue of the surviving spouse, the surviving spouse takes the first \$50,000 plus one-half the balance of the estate. If surviving issue one or more of whom are not issue of the surviving spouse, the spouse takes one-half of the intestate estate. § 13.11.010.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 13.11.150.
- (2) Testamentary Capacity - capable of understanding the nature of the act in which he is engaged. § 13.11.150.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 13.11.155.
- (4) Witnesses - 2. § 13.11.155.

INTERESTED WITNESS: A will or any provision thereof is not invalid because it is signed by an interested witness. § 13.11.170.

NUNCUPATIVE (ORAL) WILL: Prohibited. See Military Provisions for exception. § 13.11.158.

HOLOGRAPHIC WILL: Valid if material provisions in the handwriting of the testator, signed and dated. § 13.11.160.

MILITARY PROVISIONS: A mariner at sea or soldier in military service may dispose of his personal property by means of oral will, provided will reduced to writing within 30 days of declaration or submitted for proof to the court within six months after the testamentary words are spoken. § 13.11.158.

ALASKA

FIDUCIARY BOND REQUIREMENTS:

Executor -- A bond is required unless the estate is testate and the will expressly waives bond; the executor is a qualified corporate surety; the devisees or heirs file written waivers of surety bond; the personal representative is a qualified corporate fiduciary; the personal representative has deposited cash or collateral with state agency to secure performance of representative's duties. § 13.16.255.

Guardian -- No statutory provision, but in practice court normally requires bond for property guardianship or conservatorship.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor.
§ 13.16.065.

Guardian - Nonresident qualifies as guardian.
§ 13.26.055.

REVOCATION: A will may be revoked by subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke. § 13.11.180.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions pertaining to the ex-spouse unless the will provides otherwise. A decree of separation where husband and wife maintain their status is not a divorce for purposes of this section. § 13.11.185.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse has a right to elect a share of one-third of the estate. § 13.11.070. Election must be made within nine months after date of death or within six months of probate of the will, whichever is later. § 13.11.090. Surviving spouse may waive right of election.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 45.60.011 to 45.60.101.

UNIFORM SIMULTANEOUS DEATH ACT: A person who fails to survive testator by 120 hours is treated as if he predeceased the testator. § 13.11.020. Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. § 13.43.010.

CHOICE OF LAW: The meaning and legal effect of a disposition in a will shall be determined by the law of the state selected by the testator in his will unless the application of that law is contrary to provisions relating to the elective share, exempt property or public policy. § 13.11.225.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Procedure available when the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration reasonable funeral expenses and reasonable final medical & hospital expenses of the decedent. § 13.16.690. Alaska also permits the collection of personal property by affidavit when the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$15,000. §13.16.680.

ALASKA

Alaska Self-Proving Clause

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19_____, and, being first sworn, declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes expressed in it, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____ and _____, the witnesses, sign our names to this instrument, and, being first sworn, declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

ALASKA

THE STATE OF _____
COUNTY OF _____ [or _____ Judicial
District]

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn
to before me by _____ and
_____, witnesses, this _____
day of _____.

(Seal)

(Signed)

(Official capacity of
officer)

Source:
Alaska Stat. § 13.11.165

Statutory Short Form Power of Attorney § 13.26.332
(1988). Uniform Anatomical Gift Act § 13.50.010 (1988).

ARIZONA

STATUTE: Ariz. Rev. Stat. § 14-2101 et seq.

INTESTATE DESCENT & DISTRIBUTION: Surviving spouse is entitled to one-half of all community property. If the decedent is not survived by issue, or if there are surviving issue, all of whom are issue of the surviving spouse also, then the surviving spouse inherits all the community and separate property. If there are surviving issue, one or more of whom are not issue of the surviving spouse, the surviving spouse is entitled to one-half of the separate property, but is not entitled to any interest in the decedent's half of the community property. § 14-2102. § 14-2103 share of heirs other than surviving spouse.

BASIC WILL REQUIREMENTS:

(1) Age - 18. § 14-2501.

(2) Testamentary Capacity - aware of the nature and significance of the act; recognize the nature and character of property owned; and understand relationship to heirs. § 14-2501.

(3) Signature - testator's signature, or signed by someone under testator's direction and in his presence. § 14-2502.

(4) Witnesses - 2. § 14-2502.

INTERESTED WITNESS: A will or provision thereof is not invalid because it is signed by an interested witness. § 14-2505.

NUNCUPATIVE (ORAL) WILL: Prohibited. § 14-2502.

HOLOGRAPHIC WILL: Valid if signature and all material provisions are in the handwriting of the testator. Date not required. § 14-2503.

MILITARY PROVISIONS: None.

ARIZONA

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise, all heirs or devisees file a waiver, executor is a national banking corporation, a holding at a state banking permit, a title insurance company or a trust company, or the size of the estate permits summary administration and the surviving spouse is applying for appointment. § 14-3603.

Guardian - Court can require bond. § 14-5105.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor. § 14-3601.

Guardian - Nonresident qualifies as guardian. §§ 14-5206, 14-5311. If unrelated, must be fingerprinted § 14-5206.

REVOCATION: A will may be revoked by subsequent will (either expressly or by inconsistency) or by physical destruction with intent to revoke. § 14-2507.

EFFECT OF SUBSEQUENT DIVORCE: Divorce, dissolution, or annulment voids all provisions pertaining to ex-spouse and issue of the ex-spouse who are not also issue of the testator. § 14-2508.

SPOUSE'S RIGHT OF ELECTION: None. Surviving spouse is entitled to one-half of all community property based on community property law.

UNIFORM TRANSFERS GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. § 14-7652 et seq. 1988.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply

ARIZONA

when testator expressly provides in the will, living trusts, deeds or contracts of insurance for devolution of his property in the event of simultaneous death. §§ 14-2804 to 14-2809. NOTE: For purpose of intestate succession, heir must survive decedent by 120 hours.

CHOICE OF LAW: The meaning and legal effect of a disposition in a will shall be determined by the law of the state selected by the testator in his will unless the application of that law is contrary to public policy. § 14-2602.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Procedure available when the value of the entire estate, less liens and encumbrances, does not exceed allowance in lieu of homestead, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses and reasonable final medical and hospital expenses of the decedent § 14-3973. Arizona also permits the collection of personal property by affidavit when the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$30,000. § 14-3971.

ARIZONA

Arizona Self-Proving Clause

I, _____, the testator, sign my name to this instrument this day of _____, 19____, and, being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), and I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

ARIZONA

THE STATE OF _____
COUNTY OF _____

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn
to before me by _____ and _____, witnesses, this
_____ day of _____.

(Seal)

(Signed)

(Official capacity of
officer)

Ariz. Rev. Stat. § 14-2504.

§ 14-2504(B) Self proving after execution

We, _____, _____, and _____, the testator and the
witnesses, respectively, whose names are signed to the
attached or foregoing instrument, being first duly sworn,
do hereby declare to the undersigned.

ARKANSAS

STATUTE: Ark. Code Ann. Note: Arkansas Statutes were revised in 1987 (Numbering System) printed references below are to 1949 Statutes §§ 28-9-201 thru 28-9-220; §§ 28-10-101 thru 28-10-107; §§ 28-11-102 thru 28-11-405; §§ 28-12-102 thru 28-12-109; §§ 28-24-101 thru 28-48-304.

INTESTATE DESCENT & DISTRIBUTION: The inheritable estate, passes first to the children of the decedent, and the descendants of each child who may have predeceased the decedent. If decedent is not survived by a descendant, the surviving spouse inherits the entire estate, unless they had not been continually married for 3 years; then, the surviving spouse inherits 50% of the estate. The remaining 50% is distributed to the decedent's parents. § 28-9-214. If no children or spouse, to parents equally or surviving parent entirely.

NOTE: The above is subject to various rights of the surviving spouse to dower, curtesy, homestead, etc. § 61-137.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 28-25-101.
- (2) Testamentary Capacity - sound mind. § 28-25-101.
- (3) Signature - testator's signature at the end of the will or signed by someone under testator's direction and in his presence. § 28-25-103.
- (4) Witnesses - 2. § 28-25-103. Must be 18. § 28-25-102.

INTERESTED WITNESS: Will is not invalid because attested by an interested witness. However, the interested witness forfeits any amount above that which he is entitled by law of intestacy unless two other disinterested witnesses attested the will. § 28-25-102.

NUNCUPATIVE (ORAL) WILL: Prohibited. § 28-25-103.

ARKANSAS

HOLOGRAPHIC WILL: Valid if the will and signature are written in the hand of the testator. No attestation is required, but validity of will must be established by three (3) credible disinterested witnesses who can verify the handwriting and signature of testator. § 28-25-104.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise, or where all interested persons consent in writing to waiver. Bond cannot be waived for nonresident administrator. § 28-48-206.

Guardian - Bond required unless will provides otherwise § 28-65-203. If guardianship of the person only, amount of bond shall not exceed \$1,000. § 28-65-215.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided he is 21 years of age and appoints Clerk of Court agent to accept service of process. § 28-48-101.

Guardian - Nonresident may be guardian. Must be at least 18 years of age and appoint resident agent to accept service of process. § 28-65-203.

REVOCATION: A will may be revoked by a subsequent will, either expressly or by inconsistency, or by physical destruction or cancellation with intent to revoke. Partial revocation permitted. § 28-25-109.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions pertaining to the ex-spouse. § 28-25-109.

SPOUSE'S RIGHT OF ELECTION: The surviving spouse may elect to take against the will within one month after the expiration of time limited for filing claims. The share is limited to dower or curtesy interest in real and personal property. The spouses must have been married for more than one year continuously. § 28-25-401 and § 28-25-403.

UNIFORM TRANSFERS TO MINORS ACT: A person may appoint a custodian to receive transferrable property for a minor beneficiary. This transfer can be made by irrevocable gift or irrevocable power of appointment to the custodian for the benefit of the minor. No bond is required and custodian is not liable for loss in absence of bad faith, intentional wrongdoing or gross negligence. § 9-26-202 thru § 9-26-217.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is legally insufficient to establish whether beneficiary survived or testator survived, estate passes as if testator had survived absent contrary provision in will. § 28-10-101. Because evidence will seldom be legally insufficient for submission to trier of fact, some testators may prefer a condition that beneficiary survive testator for some specific period of time. Inapplicable when will, living trust, deeds or contracts of insurance provide otherwise or where provisions are made for a presumption of nonsimultaneous death.

CHOICE OF LAW: When a will of a nonresident of this state relative to property within this state has been admitted to probate in another jurisdiction, proper execution, proof and admittance to probate is presumed. This state shall admit such will to probate upon presentation of an authenticated copy of the will and the owner admitting the will to probate. § 28-40-120.

SELF-PROVING PROVISION: No specific provision but effect can be achieved in uncontested cases by execution of proof of will affidavit during testator's lifetime. Probate Form #4. Copies of self-proving clauses commonly used in Arkansas follow. Testator can secure judicial declaration of will validity during his or her lifetime and this has effect of probate to the extent that he or she does not supersede will by other testamentary acts.

ARKANSAS

SMALL ESTATE ADMINISTRATIONS: Procedure available when the value, less encumbrances, of all property owned by the decedent at the time of death, excluding the homestead of and the statutory allowances for the benefit of a spouse or minor children, if any, of the decedent, does not exceed fifty thousand dollars (\$50,000). Process initiated by one of the estate's distributees filing an affidavit with the clerk of the probate court at least 45 days after the decedent's death. All claims or demands against the estate must be paid prior to collection of the estate by affidavit. § 28-41-101.

ARKANSAS

Will: Proof of Will Clause for a Male

PROOF OF WILL

STATE OF ARKANSAS

COUNTY OF _____

We, _____, and _____, on oath state that we are the subscribing witnesses to the attached written instrument dated the _____ day of _____, 19____, which purports to be the Last Will and Testament of _____. On the execution date of the instrument, the Testator, in our presence, signed the instrument at the end thereof and declared the instrument to be his Will, and requested that we attest to the execution thereof whereupon, in the presence of the Testator each of us signed our respective names as attesting witnesses. At the time of the execution of the instrument, the Testator appeared to be over eighteen (18) years of age, of sound mind, and acting without undue influence, fraud or restraint.

DATED this _____ day of _____, 19____.

Subscribed and sworn to before me on this _____ day of _____, 19____.

Notary Public

My Commission Expires:

ARKANSAS

Will: Proof of Will Clause for a Female

PROOF OF WILL

STATE OF ARKANSAS

COUNTY OF _____

We, _____, _____, and _____, on oath state that we are the subscribing witnesses to the attached written instrument dated the _____ day of _____, 19____, which purports to be the Last Will and Testament of _____. On the execution date of the instrument, the Testatrix, in our presence, signed the instrument at the end thereof and declared the instrument to be her Will, and requested that we attest to the execution thereof whereupon, in the presence of the Testatrix each of us signed our respective names as attesting witnesses. At the time of the execution of the instrument, the Testatrix appeared to be over eighteen (18) years of age, of sound mind, and acting without undue influence, fraud or restraint.

DATED this _____ day of _____, 19____.

Subscribed and sworn to before me on this _____ day of _____, 19____.

Notary Public

My Commission Expires:

CALIFORNIA

STATUTE: Cal. Probate Code § 1 et. seq.

INTESTATE DESCENT & DISTRIBUTION (applicable to decedents dying on or after 1 January 1985. See repealed Probate Code § 200 et seq. for earlier dates of death).

(1) The surviving spouse automatically receives his or her half of the community and quasi-community property. The surviving spouse also receives one-half of the decedent's community and quasi-community property § 6401.

(2) The surviving spouse receives all the decedent's separate property if the decedent leaves no issue, parent, sibling, or issue of a sibling. The surviving spouse receives only one-half of the decedent's separate property if the decedent leaves one child, the issue of a deceased child, a parent, or the issue of a parent. The surviving spouse receives one-third of the decedent's separate property if the decedent leaves more than one issue or issue of two or more predeceased children. § 6401.

(3) If there is no surviving spouse, inheritance is determined by § 6402. See also § 6402.5 for special rules where there is no surviving spouse or children, and decedent had a predeceased spouse.

BASIC WILL REQUIREMENTS:

(1) Age - 18. § 6100. An emancipated minor is considered to be over age of majority for making and revoking a will. Civil Code § 63.

(2) Testamentary Capacity - must be mentally competent. § 6100.5.

(3) Signature by testator or by someone under testator's direction and in his presence. § 6110.

(4) Witnesses - 2. § 6110.

INTERESTED WITNESS: No invalidity of will or provision. A rebuttable presumption arises that witness procured devise by duress, menace, fraud or undue influence. § 6112. Even if the presumption is not overcome, however, that witness will take up to any intestate share to which he would have been entitled.

CALIFORNIA

NUNCUPATIVE (ORAL) WILL: Prohibited for persons dying on or after January 1, 1983.

HOLOGRAPHIC WILLS: Signature and material provisions must be handwritten by testator. No witnesses needed. Holographic codicils are also allowed. § 6111.

MILITARY PROVISIONS: Nuncupative will in military service in field in peril of death is not valid if made after 1982. See note regarding Section 54. Provision is made for conservatorship of the property of a missing servicemember. §§ 1403, 1803. Amounts due to the decedent for services in the Armed Forces of the United States are excluded in determining if the estate is small enough to qualify for summary probate proceedings. § 13050.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise. Also, if will is silent and all beneficiaries waive the filing of a bond, court may dispense with the requirement. If will specifically requires a bond, court has no discretion. § 541.

Administrator - Bond required unless all heirs waive. § 541.

Guardian - Guardian of the property must file a bond unless will provides otherwise. Section 2320 and 2324. Guardian of person only need not file a bond unless required by court. Section 2322.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor. § 405.1.

Guardian - Nonresident qualifies as guardian although residents are preferred. § 1510; Guardianship of Brown 546 P.2d 298, 128 Cal. Rptr. 10 (1976). A corporate fiduciary whose principal place of business is not California cannot act as a guardian of the estate in California. Finance Code §§ 1502-1503.

CALIFORNIA

REVOCATION: A will or any part thereof may be revoked by a subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke by the testator or by another in the testator's presence and by his direction. Prob. Code § 6120.

EFFECT OF SUBSEQUENT DIVORCE OR ANNULMENT: Unless the will expressly provides otherwise, a subsequent divorce or annulment revokes any provision pertaining to former spouse. All provisions of the will are construed as if former spouse predeceased the testator. Probate Code § 6122.

SPOUSE'S RIGHT OF ELECTION: There is no requirement that a surviving spouse make an election to retain his or her one-half interest in community or quasi-community property. Certain elections may be made by a surviving spouse in regard to this property. See §§ 13502-13503.

UNIFORM GIFTS TO MINORS ACT: Testator may specify that property shall be delivered to a custodian subject to the California Uniform Gifts to Minors Act. Section 6341. California statute is based on Uniform Gift to Minor's Act. No bond is required of custodian and uncompensated custodian is not liable for losses in absence of bad faith or gross negligence. §§ 3900-3925. The Act can be used to postpone transfer beyond the age of minority. See § 3920.5.

UNIFORM SIMULTANEOUS DEATH: Where evidence is insufficient to prove by clear and convincing evidence that a devisee survived the testator, the property is disposed of as if the devisee had predeceased the testator. § 6146. Testator can make a contrary will provision. Id.

CHOICE OF LAW: A written will is valid if it is executed:

- (1) in compliance with the law at the time and place of execution;
- (2) in compliance with the law at the place of domicile, nationality, or abode at the time of execution, or at the time of death,
- (3) is valid under present California law as a holographic, witnessed, or international will. § 6113.

CALIFORNIA

UNIFORM INTERNATIONAL WILLS ACT: California has enacted the Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. An international will must be in writing, may be in any language, may be written by hand or any other means, may be written by a person other than the testator, and must be supported by the testator's declaration, in the presence of two witnesses and a person who is authorized to act in connection with international wills, that the document is the testator's will and that he or she knows the contents of it. The testator must sign or acknowledge his or her signature on the will in the presence of the witnesses and the authorized person, and the witnesses and authorized person must sign in the presence of the testator. If the testator is unable to sign the will, the validity is not affected if the authorized person makes a note on the will indicating why the testator is unable to sign the will. If unable to sign, the testator may also direct any other person present to sign the will for the testator. §§ 6380-6390.

SELF-PROVING PROVISION: Yes. § 329. For form, see next page.

CALIFORNIA STATUTORY WILL: California has enacted legislation which recognizes the validity of statutory "fill-in-the-blank" wills. These are commercially available and typically cost \$1.50 each. However, the 74th Military Law Center has had both the statutory will form and the statutory will with trust form printed and they have given us permission to reproduce these documents. Both of these are provided in camera ready form following the Self-Proving provision.

Small Estate Administration: Procedure available when the value of a testate or intestate estate does not exceed \$60,000 in personal property. The process is available 40 days after the decedent's death and the surviving spouse is favored under the statute. §13100.

PROOF OF WILL

On the date written below, _____ declared to us, the undersigned, that this instrument, consisting of _____ pages, including the page signed by _____ as witnesses, was his Will and requested us to act as witnesses to it. He thereupon signed this Will in our presence, all of us being present at the same time. We now, at his request, and in his presence and in the presence of each other, subscribe our names as witnesses.

We are acquainted with _____. At this time he is over the age of 18 years, and to the best of our knowledge, he is of sound mind and is not acting under duress, menace, fraud, misrepresentation, or undue influence.

Each of us is now more than 18 years of age and a competent witness and resides at the address set forth after this name.

We declare under penalty of perjury, under the laws of the State of _____, that the foregoing is true and correct. Executed on _____, 1990 at _____.

_____ Address _____

_____ Address _____

California Statutory Will

NOTICE to the person who signs this will:

1. It may be in your best interest to consult with a California lawyer because this Statutory Will has serious legal effects on your family and property.
2. This will does not dispose of property which passes on your death to any person by operation of law or by any contract. For example, the will does not dispose of joint tenancy assets or your spouse's share of community property, and it will not normally apply to proceeds of life insurance on your life or your retirement plan benefits.
3. This will is not designed to reduce death taxes or any other taxes. You should discuss the tax results of your decisions with a competent tax advisor.
4. You cannot change, delete, or add words to the face of this California Statutory Will. (If you do, the change or the deleted or added words will be disregarded and this will may be given effect as if the change, deletion, or addition had not been made.) You may revoke this California Statutory Will and you may amend it by codicil.
5. If there is anything in this will that you do not understand, you should ask a lawyer to explain it to you.
6. The full text of this California Statutory Will, the definitions and rules of construction, the property disposition clauses, and the mandatory clauses follow the end of this will and are contained in the Probate Code of California.
7. The Witnesses to this will should carefully read and follow the witnessing procedure described at the end of this will. All of the witnesses must watch you sign this will.
8. You should keep this will in your safe deposit box or other safe place.
9. This will treats most adopted children as if they are natural children.
10. If you marry or divorce after you sign this will, you should make and sign a new will.
11. If you have children under 21 years of age, you may wish to use the California Statutory Will with Trust or another type of will.

INSTRUCTIONS contained in California Probate Code Sections 56.1, 56.2, 56.4, and 56.6:

1. Any person of sound mind and over the age of 18 may execute a California Statutory Will under the provisions of this chapter.
2. The only method of executing a California Statutory Will is for the following to occur:
 - (a) The testator shall do the following:
 - (1) Complete the appropriate blanks.
 - (2) Sign the will.
 - (b) The witnesses shall do the following:
 - (1) Observe the testator's signing.
 - (2) Sign their names in the presence of the testator.

The execution of the attestation clause provided in the California Statutory Will by two or more witnesses shall satisfy Section 329.

3. If more than one property disposition clause appearing in paragraph 2.3 of a California Statutory Will Form is selected, or if none is selected, the property of a testator who signs a California Statutory Will shall be distributed to the testator's heirs as if the testator did not make a will.
4. (a) A California Statutory Will may be revoked and may be amended by codicil in the same manner as other wills.
 (b) Any additions to or deletions from the California Statutory Will on the face of the California Statutory Will Form, other than in accordance with the instructions, shall be ineffective and shall be disregarded.

California Statutory Will of

(Insert your name)

Article I. Declaration.

This is my will and I revoke any prior wills and codicils.

Article II. Disposition of My Property

2.1 PERSONAL AND HOUSEHOLD ITEMS.

I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2 CASH GIFT TO A PERSON OR CHARITY.

I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

<p>FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT. (Name only one.)</p> <p>Please print: _____</p>	<p>AMOUNT OF GIFT: \$ _____</p> <p>AMOUNT WRITTEN OUT: _____ Dollars</p> <p>Signature of Testator _____</p>
---	---

2.3 ALL OTHER ASSETS. (MY "RESIDUARY ESTATE").

I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will be distributed as if I did not make a will.

PROPERTY DISPOSITION CLAUSES (select one.)

(a) To my spouse, if living; if not living, then to my children and the descendants of any deceased child

(b) To my children and the descendants of any deceased child. I leave nothing to my spouse, if living

(c) To be distributed as if I did not have a will

Article III. Nominations of Executor and Guardian

3.1 EXECUTOR (Name at least one.)

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR

SECOND EXECUTOR

THIRD EXECUTOR

CALIFORNIA

3.2 GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.2 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.2 to serve as guardian of the property of that child. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON

FIRST GUARDIAN OF THE PROPERTY

SECOND GUARDIAN OF THE PERSON

SECOND GUARDIAN OF THE PROPERTY

THIRD GUARDIAN OF THE PERSON

THIRD GUARDIAN OF THE PROPERTY

3.3 BOND

My signature in this box means that a bond is not required for any individual named in this will as executor or guardian. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not receive the share of your estate to which they are entitled, including your creditors, because of improper performance of duties by the executor or guardian. Bond premiums are paid out of your estate.)

I sign my name to this California Statutory Will on _____ at _____

Date

City State

Signature of Testator

STATEMENT OF WITNESSES

(You must use two adult witnesses and three would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California Statutory Will in our presence, all of us being present at the same time, and we now, at the testator's request, in the testator's presence, and in the presence of each other, sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature _____ Residence Address _____

Print Name Here: _____

Signature _____ Residence Address _____

Print Name Here: _____

Signature _____ Residence Address _____

Print Name Here: _____

Notice to Testator: The Witnesses shall do the following: (1) Observe the testator's signing. (2) Sign their names in the presence of the testator.

California Statutory Will with Trust

NOTICE to the person who signs this will:

1. This form contains a trust for your descendants. If you do not want to create a trust, do not use this form.
2. It may be in your best interest to consult with a California lawyer because this Statutory Will has serious legal effects on your family and property.
3. This will does not dispose of property which passes on your death to any person by operation of law or by any contract. For example, the will does not dispose of joint tenancy assets or your spouse's share of community property, and it will not normally apply to proceeds of life insurance on your life or your retirement plan benefits.
4. This will is not designed to reduce death taxes or any other taxes. You should discuss the tax results of your decisions with a competent tax advisor.
5. You cannot change, delete, or add words to the face of this California Statutory Will. If you do, the change or the deleted or added words will be disregarded and this will may be given effect as if the change, deletion, or addition had not been made. You may revoke this California Statutory Will and you may amend it by codicil.
6. If there is anything in this will that you do not understand, you should ask a lawyer to explain it to you.
7. The full text of this California Statutory Will, the definitions and rules of construction, the property disposition clauses, and the mandatory clauses follow the end of this will and are contained in the Probate Code of California.
8. The Witnesses to this will should not be people who may receive property under this will. You should carefully read and follow the witnessing procedure described at the end of this will. All of the witnesses must watch you sign this will.
9. You should keep this will in your safe deposit box or other safe place.
10. This will treats most adopted children as if they are natural children.
11. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS contained in California Probate Code Sections 56.1, 56.2, 56.4, and 56.6:

1. Any person of sound mind and over the age of 18 may execute a California Statutory Will under the provisions of this chapter.
2. The only method of executing a California Statutory Will is for the following to occur:
 - (a) The testator shall do the following:
 - (1) Complete the appropriate blanks.
 - (2) Sign the will.
 - (b) The witnesses shall do the following:
 - (1) Observe the testator's signing.
 - (2) Sign their names in the presence of the testator.

The execution of the attestation clause provided in the California Statutory Will by two or more witnesses shall satisfy Section 329.
3. If more than one property disposition clause appearing in paragraph 2.3 of a California Statutory Will Form is selected, or if none is selected, the property of a testator who signs a California Statutory Will shall be distributed to the testator's heirs as if the testator did not make a will.
4. (a) A California Statutory Will may be revoked and may be amended by codicil in the same manner as other wills.
 (b) Any additions to or deletions from the California Statutory Will on the face of the California Statutory Will Form, other than in accordance with the instructions, shall be ineffective and shall be disregarded.

California Statutory Will with Trust of

(Insert your name)

Article I. Declaration.

This is my will and I revoke any prior wills and codicils.

Article II. Disposition of My Property

2.1 PERSONAL AND HOUSEHOLD ITEMS.

I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2 CASH GIFT TO A PERSON OR CHARITY.

I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

<p>FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT. (Name only one.)</p> <p>Please print) _____</p> <p>_____</p>	<p>AMOUNT OF GIFT: \$ _____</p> <p>AMOUNT WRITTEN OUT: _____ Dollars</p> <p>_____</p> <p>Signature of Testator</p>
--	--

2.3 ALL OTHER ASSETS. (MY "RESIDUARY ESTATE").

I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will be distributed as if I did not make a will.

PROPERTY DISPOSITION CLAUSES (select one.)

(a) To my spouse, if living; if not living, then in one trust to provide for the support and education of my children and the descendants of any deceased child until I have no living child under 21 years of age

(b) To my children and the descendants of any deceased child in one trust to provide for their support and education until I have no living child under 21 years of age. I leave nothing to my spouse, if living

Article III. Nominations of Executor, Trustee, and Guardian

3.1 EXECUTOR (Name at least one.)

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR

SECOND EXECUTOR

THIRD EXECUTOR

3.2 TRUSTEE (Name at least one.)

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph 3.2 to serve as trustee of that trust. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

FIRST TRUSTEE

SECOND TRUSTEE

CALIFORNIA

THIRD TRUSTEE

3.3 GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.3 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.3 to serve as guardian of the property of that child. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON

FIRST GUARDIAN OF THE PROPERTY

SECOND GUARDIAN OF THE PERSON

SECOND GUARDIAN OF THE PROPERTY

THIRD GUARDIAN OF THE PERSON

THIRD GUARDIAN OF THE PROPERTY

3.4 BOND

My signature in this box means that a bond is not required for any individual named in this will as executor, trustee, or guardian. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not receive the share of your estate to which they are entitled, including your creditors, because of improper performance of duties by the executor, trustee, or guardian. Bond premiums are paid out of your estate.)

I sign my name to this California Statutory Will with Trust on _____ at _____

Date

City

State

Signature of Testator

STATEMENT OF WITNESSES

(You must use two adult witnesses and three would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California Statutory Will with Trust in our presence, all of us being present at the same time, and we now, at the testator's request, in the testator's presence, and in the presence of each other, sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature _____

Residence Address _____

Print Name Here: _____

Signature _____

Residence Address _____

Print Name Here: _____

Signature _____

Residence Address _____

Print Name Here: _____

Notice to Testator: The Witnesses shall do the following: (1) Observe the testator's signing. (2) Sign their names in the presence of the testator.

CALIFORNIA

COLORADO

STATUTE: Colo. Rev. Stat. § 15-1-101 et seq. (Uniform Probate Code, with some substantial modification, has been adopted).

INTESTATE DESCENT & DISTRIBUTION: If no surviving issue, the surviving spouse inherits the entire estate. If decedent is survived by issue of both decedent and surviving spouse, the surviving spouse takes the first \$25,000, plus one-half the balance of the estate. If decedent is survived by issue not the issue of the surviving spouse, the surviving spouse inherits one-half of the decedent's estate. § 15-11-102.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 15-11-501.
- (2) Testamentary Capacity - mentality and memory sufficient to understand intelligently the nature and purpose of the transaction, but capacity is presumed unless contestant can show lack of. § 15-11-501, 15-12-407.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 15-11-502.
- (4) Witnesses - 2. § 15-11-502.
- (5) Must be in writing. § 15-11-502.

INTERESTED WITNESS: A will or any provision thereof is not invalid because it is signed by an interested witness. § 15-11-505. But unless the will is sufficiently attested to by other competent witnesses, the will is void as to his legacy. White v. Bower, 56 Colo. 575, 136 P. 1053 (1913).

NUNCUPATIVE (ORAL) WILL: Not recognized.

HOLOGRAPHIC WILL: Valid if written, signed and dated by the testator. No attestation is required. § 15-11-503.

MILITARY PROVISIONS: None.

COLORADO

FIDUCIARY BOND REQUIREMENTS:

Personal Representative - No bond is required when appointed in informal proceedings, unless will expressly requires it, it is demanded by a party with an interest, or upon the appointment of a special administrator. § 15-12-603, or when required under section 15-12-605.

Conservator - Court may require bond. § 15-14-411. In practice the court does require bonds for conservators.

Guardian - No bond required.

DISTINCTION BETWEEN GUARDIAN AND CONSERVATOR: Colorado follows the U.P.C. distinction between guardians and conservators. A testamentary guardian is not a general guardian, so, if management of assets is required, a separate conservatorship proceeding may be necessary. C.R.S. 15-14-209. A guardian may receive and expend money up to \$5,000 per year for the ward's support, care and education without a conservatorship, if permitted by the court. C.R.S. 15-14-103. A testamentary guardian may be appointed by Will or by other writing (C.R.S. 15-14-202) and a minor over 14 may nominate a guardian (C.R.S. 15-14-206 and 207)

FIDUCIARY RESIDENCY REQUIREMENTS:

Personal Representative - Nonresident qualifies. § 15-12-602. Acceptance of position by nonresident is consent to jurisdiction.

Executor - Nonresident qualifies. §§ 15-14-202, 15-14-301.

Guardian - Nonresident qualifies as guardian. §§ 15-14-202, 15-14-301.

Conservator - Nonresident qualifies. § 15-14-413. Acceptance of position by nonresident is consent to jurisdiction.

REVOCATION: A will is revoked by subsequent will, in part or in whole, either expressly or by inconsistency. Revocation also effectuated by physical destruction with intent to revoke. § 15-11-507.

MEMORANDUM DISPOSITION OF PERSONAL PROPERTY: C.R.S. 15-11-513 adopts the UPC provision for disposition of tangible personal property by a separate written memorandum that has been acknowledged in the Will.

NONPROBATE TRANSFERS: Property held in joint tenancy is not subject to disposition by will. As to real estate, C.R.S. 38-11-101 require that joint tenancy must be clearly and unequivocally indicated in the deed to overcome the presumption in favor of tenancy in common. However, as to personal property, C.R.S. 38-11-101, and as to bank accounts, etc., C.R.S. 15-15-104 establishes a presumption of joint tenancy with right of survivorship absent clear and convincing evidence of a contrary intent. Furthermore, assets in multiple party JTWROS accounts are subject to recapture by the estate for payment of debts, notwithstanding the non-probate transfer classification.

Colorado is not a community property state, but it has adopted the Uniform Disposition of Community Property Rights at Death Act (C.R.S. 15-20-101 *et seq.*). This Act provides that property acquired and retained by a married person as community property while domiciled in a community property state may retain its community property characterization for purposes of Colorado laws of succession. Therefore, only one-half of such property is subject to testamentary disposition.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids any disposition pertaining to ex-spouse unless will provides otherwise. § 15-11-508.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may elect to take a share of one-half the augmented estate as against the will. Election must be filed within 6 months after notice for filing of claims or 1 year after death. §§ 15-11-201, 15-11-205.

CONTRACTS CONCERNING SUCCESSION: C.R.S. 15-11-701 provides that a contract for a Will, devise, etc., is valid only if stated in or referenced by the Will or is in writing signed by the decedent. Joint, mutual or reciprocal wills do not create presumption of a contract. An antenuptial agreement between persons who have been previously married, for example, should be reduced to writing and incorporated by reference in the Will.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian. 11-50-

COLORADO

116. §§ 11-50-101 to 11-50-126.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. § 15-11-613. Except where Simultaneous Death Act applies, a devisee must survive the testator by 120 hours unless Will provides a longer period. C.R.S. 15-11-601.

CHOICE OF LAW: A written will is valid if its execution complies with the law of the state where it was executed at time of execution, or of the law of the state, where at time of execution or death, the testator is domiciled. § 15-11-506. Meaning and effect of a disposition determined by law of state selected by the testator in his Will unless contrary to provisions relating to the elective share, exempt property and family allowances or other public policy of Colorado. C.R.S. 15-11-602.

SELF-PROVING PROVISION: Yes. For form, see next page. C.R.S. 15-11-504 is identical to UPC provisions and permits 'self-proving language either simultaneous with execution or by separate, subsequent affidavit. Statutory language is not mandatory; any substantially comparable language should suffice.

SAKE KEEPING OF WILL: Executed will may be deposited with any court for safekeeping during Testator's lifetime. § 15-11-901.

DUTY OF CUSTODIAN OF WILL: Any person having custody of a person's will must deliver it to the appropriate court within 10 days of Testator's death. Failure to do so subjects custodian to civil liability for any damages sustained by any person and to contempt of court proceedings. § 15-11-902 (NOTE: This is not the same as filing the will for probate, but eliminates the possibility of "freezing" a safe deposit box.)

COLORADO

SMALL ESTATE ADMINISTRATION: Summary procedure for collection and distribution of the personal property in the estate by affidavit of successors-in-interest is available when the fair market value of property owned by decedent and subject to disposition by will or intestate succession, less liens and encumbrances, is less than \$20,000. § 15-12-1201, et seq. (e.g., property held in joint tenancy with right of survivorship excluded in determining eligibility for small estates closing procedures.)

Declaration as to Medical treatment + Forms § 15-18-103 et seq.

COLORADO

Colorado Self-Proving Testimonium and Attestation

(Use when execution of Will and self-proving provisions
are done simultaneously)

I, _____, the Testator, sign my name to this
instrument, this _____ day of
_____, 19____, and, being
first duly sworn, do hereby declare to the undersigned
authority that I sign and execute this instrument as my
last will and that I sign it willingly (or willingly
direct another to sign for me), that I execute it as my
free and voluntary act for the purpose therein expressed,
and that I am eighteen years of age or older, of sound
mind, and under no constraint or undue influence.

(Testator's Name)

We, _____, and _____,
the witnesses, sign our names to this instrument, being
first duly sworn, and do hereby declare to the
undersigned authority that the testator signs and
executes this instrument as his last will and that he
signs it willingly (or willingly directs another to sign
for him), and that he executes it as his free and
voluntary act for the purposes therein expressed, and
that each of us, in the presence and hearing of the
testator hereby signs this will as witness to the
testator's signing, and that to the best of his knowledge
the testator is eighteen years of age or older, of sound
mind, and under no constraint or undue influence.

Witness

Witness

Address

Address

COLORADO

STATE OF)
)
COUNTY OF) ss.

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn to
before me by _____ and _____,
witnesses, this _____ day of _____, 19____.

My commission expires: _____

Notary Public

COLORADO

Colorado Self-Proving Clause

(For Use When A Separate Affidavit is Desired or
Necessary Subsequent to the Execution of the Will)

We, _____, _____ and _____,
the testator and the witnesses, respectively, whose names
are signed to the attached or foregoing instrument, being
first duly sworn, do hereby declare to the undersigned
authority that the testator signed and executed the
instrument as his last will and that he had signed
willingly (or willingly directed another to sign for
him), and that he executed it as his free and voluntary
act for the purposes therein expressed, and that each of
the witnesses, in the presence and hearing of the
testator, signed this will as witness, and that to the
best of his knowledge the testator was at that time
eighteen years of age or older, of sound mind, and under
no constraint or undue influence.

Testator

Witness

Witness

Witness

COLORADO

THE STATE OF _____
COUNTY OF _____

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn
to before me by _____ and _____,
witnesses this _____ day of _____.

(Signed)

(Official capacity of
officer)

Colo. Rev. Stat. § 15-11-504.

CONNECTICUT

STATUTE: Conn. Gen. Stat. Ann. § 45-1 et seq. (West).

INTESTATE DESCENT & DISTRIBUTION: If decedent is survived by issue all of whom are also the issue of the surviving spouse, the surviving spouse is entitled to the first \$100,000, plus one-half of the balance of the estate. If at least one of the issue is not the issue of the surviving spouse, the spouse inherits one-half of the estate. If the decedent is survived by a parent but no children or their issue, the spouse inherits \$100,000, plus three-fourths of the balance. Surviving spouse inherits the entire estate when no children, their issue, or parent survives the decedent. If neither issue nor spouse survive decedent, parents inherit the entire estate. § 45-273a.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 45-160.
- (2) Testamentary Capacity - sound mind. § 45-160.
- (3) Signature - testator's signature required. § 45-161.
- (4) Witnesses - 2. § 45-161.

INTERESTED WITNESS: Provisions concerning a witness are void unless the will is legally attested without the signature of such witness, or unless the witness is an heir to the testator. § 45-172.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Prohibited. NOTE: State will recognize a holographic will if valid in the state of its execution. § 45-161.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise. § 45-169.

Guardian - A guardian of the person shall furnish a written acceptance of guardianship and, if the court deems it necessary for the protection of the minor, a probate bond. A guardian of the

CONNECTICUT

estate shall furnish a probate bond. § 45-51.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided he appoints probate judge agent to accept service of process. § 52-60.

Guardian - Nonresident qualifies as guardian subject to same requirement as Executor above. § 52-60.

REVOCATION: A will is revoked by subsequent marriage, divorce, annulment, dissolution, birth, or adoption of a child in the absence of a will provision pertaining to such contingency. It is also revoked by a subsequent will or physical destruction with intent to revoke or by later will or codicil. § 45-162.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids entire will unless will contains a provision pertaining to such contingency, or unless the ex-spouse is not a beneficiary under the will. § 45-162.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may elect to take one-third of decedent's estate for life. Election must be made within 2 months after expiration of period for filing claims. § 45-273a.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 21. § 45-101; § 45-104; PA 81-396, sec. b.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will, living trusts, deeds or contracts of insurance for devolution of his property in the event of simultaneous death. § 45-287.

CHOICE OF LAW: Any will executed according to the law of the state where it was executed may be admitted to probate and shall be effectual to pass any property situated in this state. § 45-161.

SELF-PROVING PROVISION: Yes. No prescribed form. Any or all of the attesting witnesses to any will may, at the request of the testator or, after his decease, at the request of the executor or any person interested under it, make and sign an affidavit before

any officer authorized to administer oaths in or out of this state, stating such facts as they would be required to testify to in court to prove such will. The affidavit shall be written on such will or, if that is impracticable, on some paper attached thereto. The sworn statement of any such witness so taken shall be accepted by the court of probate as if it had been taken before such court. § 45-166. For recommended form, see self-proving clause on page 3-13 supra.

SMALL ESTATE ADMINISTRATION: Procedure available when the value of the personal property in an estate does not exceed \$20,000. All debts of the decedent must be paid prior to collection of the decedent's personal property. § 45-266.

DELAWARE

STATUTE: Del. Code Ann. tit. 12 § 101 et seq.

INTESTATE DESCENT & DISTRIBUTION: If the decedent leaves no issue or parent, the surviving spouse inherits the entire estate. If the decedent leaves a parent or an issue who is also the issue of surviving spouse, the surviving spouse inherits the first \$50,000 plus one-half of the personal estate and a life estate in the realty. If the decedent leaves issue, one or more of whom are not issue of the surviving spouse, surviving spouse inherits one-half of personal estate and a life estate in the realty. § 502.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 201.
- (2) Testamentary Capacity - sound mind. § 201.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 202.
- (4) Witnesses - 2. § 202.

INTERESTED WITNESS: A will or any provision thereof is not invalid because will is signed by an interested person. § 203.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond not required except if the will contains an express requirement of bond or if the Court of Chancery orders bond based on written demand of a person having an interest in the estate. § 1522.

Guardian - No entry of appointment of guardian until bond is filed. § 3907(b). Bond may be waived if estate consists of cash deposited in a bank. § 3906(a).

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided he appoints

DELAWARE

Register to accept service of process. § 1506.

Guardian - The court in its discretion may accept a nonresident as guardian subject to a requirement of a posted secured bond. § 3906(b).

REVOCATION: A will or any part thereof may be revoked by cancelling or by valid subsequent will or by a formal writing signed by testator expressing revocation in the presence of two or more witnesses, but this clause does not extend to an implied revocation. § 208.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids any disposition pertaining to the ex-spouse unless the will expressly provides otherwise. § 209.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take elective share of one-third of the elective estate less the amount of any transfers to the surviving spouse within 6 months after the grant of letters testamentary. § 906.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian. §§ 4501 to 4510.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 701 to 707.

CHOICE OF LAWS: A written will signed by testator is valid if executed in compliance with this title, or the law at the time of execution of the place where will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled. § 1306.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Procedure available when the value of the estate, less exempt property and jointly owned property, does not exceed \$12,500. All known debts must be paid and arrangements made for spousal allowance prior to distribution of estate. § 2306.

DELAWARE

Delaware Self-Proving Clause

STATE OF _____
COUNTY OF _____

Before me, subscriber, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, _____, the testator, declared to me and to the witnesses in my presence that the instrument is his last will and that he had willingly signed or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and each of the witnesses stated to me, in the presence and hearing of the testator, that he signed the will as witness and that to the best of his knowledge the testator was eighteen years of age or over, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

DELAWARE

Subscribed, sworn and acknowledged before me by
_____ the testator, subscribed and sworn before
me by _____ and _____, witnesses, this
_____ day of _____ A.D., _____.

(Seal)

(Signed)

(Official capacity of
officer)

Del. Code Ann. tit. 12, § 1305.

DISTRICT OF COLUMBIA

STATUTE: D.C. Code Ann. § 18-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: If the decedent leaves no child, parent, grandchild, brother, or sister, or child of a brother or sister, the surviving spouse inherits entire estate. If the decedent leaves a child or a descendant of a child, the surviving spouse inherits one-third of the estate. If the decedent leaves no child, but a parent, or brother or sister, or child of brother or sister, the surviving spouse inherits one-half. §§ 19-301 to 19-304.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 18-102.
- (2) Testamentary Capacity - sound mind and capable of executing a valid deed or contract. § 18-102.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 18-103.
- (4) Witnesses - 2. § 18-103.

INTERESTED WITNESS: Provisions concerning a witness are void as to him or her, except that such witness is entitled to such portion of the bequest which is equal to and not exceeding the share he or she would have received through intestacy. § 18-104.

NUNCUPATIVE (ORAL) WILL: Prohibited. See Military Provisions for exception. § 18-107.

HOLOGRAPHIC WILL: Prohibited. Only valid if attested and subscribed in the presence of the Testator by two witnesses. In Re Estate of Hall, 328 F. Supp. 1305 (D.D.C. 1971).

MILITARY PROVISIONS: A person in actual military service may dispose of property orally if his or her oral disposition is proved by at least two witnesses present at the request of testator. Additionally, the will must be made during the time of decedent's last illness and reduced to writing within 10 days after it was made. § 18-107

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required, unless excused by testator's will or by written waiver of all interested parties. Even if Executor is excused, a bond shall nevertheless be given in an amount which the

DISTRICT OF COLUMBIA

Court considers sufficient to secure payment of debts which are inadequately secured, and to pay D.C. inheritance tax. The sum may be increased or decreased by the Court at its discretion for good cause. § 20-502.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided he appoints Register of Wills to accept service of process. § 20-303.

Guardian - Nonresident qualifies as guardian subject to same requirement as Executor above. § 21-110.

REVOCATION: A will or any part thereof may be revoked by a subsequent will declaring revocation, or by physical destruction with intent to revoke. The doctrine of implied revocation applies where there has been a divorce and division of property by the court. Richard Liles, App. D.C. 435 A.2d 379 (1981).

EFFECT OF SUBSEQUENT DIVORCE: A subsequent divorce with a property settlement acts as revocation by implication of law. Luff v. Luff, 123 App. D.C. 251, 359 F.2d 235 (1966); Richards v. Liles, App. D.C., 435 A.2d 379 (1981). § 18-109.

SPOUSE'S RIGHT OF ELECTION: Spouse may renounce will provision and elect to take such rights as would devolve in case of intestacy. Election must be made within 6 months after will is admitted to probate. § 19-113.

UNIFORM TRANSFER TO MINORS ACT: Statutory method for gifts to minors. Generally, no bond is required of custodian and the custodian not liable for losses of property in absence of bad faith or gross negligence § 21-302 thru § 21-317.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 19-501 to 19-506.

CHOICE OF LAWS: Law of domicile of testator governs as to personal property. Readman v. Ferguson, 13 App. D.C. 60 (1898). Law of place where property is located governs as to real property. Prall v. Prall, 56 App. D.C. 333, 13 F.2d 305 (1926).

SELF-PROVING PROVISION: No provision for self-proving will.

UNIFORM ANATOMICAL GIFT ACT: Anatomical gift may be made: (1) by will; or (2) by separate document signed and witnessed by two

DISTRICT OF COLUMBIA

others. Delivery of the document is not necessary for gift to be valid. Gift is subject to amendment or revocation. § 2-1501 to 2-1508.

POUR OVER TRUSTS: Permitted. Bequests and devises may be made to inter vivos trust or testamentary trust. Inter vivos trust may be amended subsequent to testator's will. Termination of the trust does not invalidate bequest. Revocation of inter vivos trust prior to death of testator invalidates bequest. §§ 18-306.

REVIVAL: No will, codicil, or any part thereof, once in any manner revoked, can be revived, other than by re-execution. § 18-109(b).

Small Estates § 20-351.

Health Care Power of Attorney § 21-2207.

FLORIDA

STATUTE: Fla. Stat. § 731.005 et seq.

INTESTATE DESCENT & DISTRIBUTION: The surviving spouse inherits the entire estate if no surviving lineal descendants of decedent. The surviving spouse inherits the first \$20,000, plus one-half the balance of the estate if there are surviving lineal descendants common to the spouse and decedent; the remaining one-half is then shared by the surviving children. The surviving spouse inherits one-half of the estate if the decedent is survived by a lineal descendant who is not a lineal descendant of the surviving spouse. § 732.102.

EXEMPT PROPERTY: Surviving spouse is also entitled to household furniture, furnishings and appliances in decedent's usual place of abode, up to a net value of \$10,000, all automobiles held in decedent's name and used by him or his immediate family as their personal automobiles, plus decedent's personal effects up to \$1000. If no surviving spouse, decedent's minor children are entitled to this property. § 732.402.

FAMILY ALLOWANCE: The court may order payments from the estate for support of the decedent's dependents, not to exceed a total of \$6000, payable to the surviving spouse, if any. § 732.403.

HOMESTEAD: If not devised, surviving spouse takes life estate, remainder to decedent's lineal descendants. Homestead is not subject to devise, except to owner's spouse when there are no minor children. § 732.401.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 732.501.
- (2) Testamentary Capacity - sound mind. § 732.501.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence at end of will. § 732.502.
- (4) Witnesses - 2. § 732.502.
- (5) In writing. § 732.502.

INTERESTED WITNESS: A will or any part thereof is not invalid because it is signed by an interested witness (though this is not

FLORIDA

a recommended procedure). § 732.504.

NUNCUPATIVE (ORAL) WILL: Not valid. § 732.502.

HOLOGRAPHIC WILL: Not valid unless executed with the formalities required of any other written will. § 732.502(2).

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Personal Representative - Bond required unless the testator waives the requirement in will. § 733.402. (Note: Some judges require bond for all nonresident personal representatives.)

Guardian - Bond required for guardian of property. Guardian may request waiver of bond requirement. § 744.351.

FIDUCIARY RESIDENCY REQUIREMENTS:

Personal Representative - Nonresident may not be personal representative unless a relative designated in the statute. § 733.304.

Guardian - Same requirement as for personal representative above. § 744.309.

REVOCATION: A will or any part thereof may be revoked by express terms of a subsequent will or codicil, or a subsequent inconsistent will, but revocation extends only so far as inconsistency. It is also revoked by physical destruction with intent to revoke. §§ 732.505, 732.506.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids any disposition to former spouse made before or during marriage. § 732.507(2).

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may elect an amount equal to 30% of net estate. Election must be filed within 4 months from date of notice of Administration. No elective share in Florida property of a decedent not domiciled in Florida. §§ 732.201 to 732.212.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 18 or 21. §§ 710.01

to 710.126.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. § 732.601.

CHOICE OF LAWS: Any will, other than a holographic or nuncupative will, executed by a nonresident is valid as a will in this state if valid under the laws of the state where testator was at time of execution. § 732.502(2).

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Florida has a three-tiered plan for small estates administration. Each plan is keyed to a different value, procedure and petitioner. Family administration is available in intestate estates when the heirs at law consist solely of the surviving spouse, lineal descendants, and lineal ascendants. The value of the gross estate has a ceiling of \$60,000 for family administration. § 735.101: Summary administration is available in testate estates (and impliedly intestate estates) when the will does not direct regular administration. The value of real and personal property may not exceed \$25,000 plus "the value of exempt property". § 735.201: Florida's court collection plan is keyed to small exempt value. Informal application by an interested person will secure court authority for collection of assets without administration. § 735.301.

Anatomical Gifts § 732.912.

FLORIDA

Florida Self-Proving Clause

STATE OF _____
COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the testator, in the presence of witnesses, signed the instrument as his last will (codicil), that he (signed) (or directed another to sign for him), and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as a witness.

(Testator)

(Witness)

(Witness)

Subscribed and sworn to before me by _____, the testator, and by _____, and _____, the witnesses, on _____, 19____.

(Notary Public)
My Commission Expires:

[Fla. Stat. § 732.503].

GEORGIA

STATUTE: O.C.G.A. Title 53, §§ 53-1-1 et seq.

INTESTATE DESCENT & DISTRIBUTION: If the decedent is survived by children or their descendants, surviving spouse inherits a child's share of the estate. If there are more than five children or descendants, the surviving wife is entitled to one-fifth (surviving husband always takes a child's share). If the decedent leaves no children or descendants, surviving spouse inherits the entire estate. § 53-4-2.

BASIC WILL REQUIREMENTS:

- (1) Age - 14. § 53-2-22.
- (2) Testamentary Capacity - sound mind. §§ 53-2-20 through 53-2-23.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 53-2-40.
- (4) Witnesses - 2. § 53-2-40.

INTERESTED WITNESS: Witness is competent, but legacy to him is void. However, a husband may be a witness to a will by which a legacy is given to his wife. § 53-2-45.

NUNCUPATIVE (ORAL) WILL: Testator may dispose of his property orally provided that declaration made during his last illness and proved by two witnesses who were present at the request of the testator. Will must be reduced to writing within 30 days. §§ 53-2-47 through 53-2-50.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: When a subscribing witness is unavailable due to military service, death or incapacity, the will may be admitted to probate upon testimony of two disinterested witnesses that testator's signature is authentic. § 53-3-18.

GEORGIA

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond not required, but judge (sua sponte) or interested person may require executor to show cause why he should not file bond. § 53-7-32.1.

Guardian - Bond required, but judge has broad discretion to reduce it. § 29-4-12.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor but must post bond for double the amount of estate. § 53-6-22.

Guardian - Nonresident does not qualify as guardian. § 29-4-4.

REVOCATION: A will or any part thereof may be revoked by a later will, expressly or by inconsistency. Inconsistent provision revokes only inconsistent part of earlier will. Marriage of testator or birth of a child to him subsequent to making of will also acts as a revocation if will does not contemplate such event. Physical destruction with intent to revoke also acts as revocation but does not revive earlier will. §§ 53-2-70 through 53-2-76.

EFFECT OF SUBSEQUENT DIVORCE: Divorce of testator acts as a revocation of the will when no provision of will is made in contemplation of the event. § 53-2-76.

SPOUSE'S RIGHT OF ELECTION: Spouse can elect to take a year's support during the period of administration. § 53-5-2.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 44-5-113 to 44-5-123.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 53-11-1 to 53-11-6.

CHOICE OF LAWS: If a foreign will has been probated in state of which the testator was resident at time of death, it may be admitted to probate in this state upon production of a verified copy of the will and an authenticated copy of the probate proceedings under seal of court. § 53-3-48.

SELF-PROVING PROVISION: Yes. See form following.

SMALL ESTATE ADMINISTRATION: When no permanent administration has been had upon an intestate estate, any heir at law of a Georgia decedent may petition a probate court for an order that no administration is necessary. Real and personal property, with no dollar value ceiling, may be administered under this section. § 53-10-1.

GEORGIA

THE STATE OF GEORGIA)

COUNTY OF _____)

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared _____,

_____, and _____, known to me to be the Testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument, in their respective capacities, and all of said persons being by me first duly sworn, _____, Testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament and that he had willingly made and executed it as his free act and deed for the purposes therein expressed. The witnesses, each on his oath stated to me, in the presence and hearing of the Testator, that the Testator had declared to them that the instrument is his last will and testament and that he executed same as such and wanted each of them to sign it as a witness; and upon his oath each witness stated further that he did sign the same as witness in the presence of the Testator and at his request; that he was at that time 14 years of age or over and was of sound mind; and that each of said witnesses was then at least 14 years of age.

TESTATOR

WITNESS

WITNESS

WITNESS

Subscribed, sworn and acknowledged before me by _____, the Testator, subscribed and sworn before me by _____,

and _____, witnesses, on _____, 19__.

NOTARY PUBLIC IN AND FOR
COUNTY,

My Commission Expires:

GEORGIA

Source:

Ga. Code Ann. § 53-2-40.1.

GUAM

STATUTE: Guam Prob. Code § 20 et seq.

INTESTATE DESCENT & DISTRIBUTION: Upon the death of either husband or wife, the community property belongs to the surviving spouse. The surviving spouse shall divide the separate property equally with any children of the decedent. If the decedent has no surviving children or their heirs, the separate property goes one-half to the surviving spouse and one-half to the decedent's parents or brothers and sisters. §§ 201-03, 220-31.

BASIC WILL PROVISIONS:

- (1) Age - 18. § 20.
- (2) Testamentary Capacity - sound mind. § 20.
- (3) Signature - after his oral declaration, testator must sign the will or it must be signed by someone under testator's direction and in his presence. § 50.
- (4) Witnesses - 2. § 50.

INTERESTED WITNESS: Provisions concerning an interested witness are void unless there are two additional disinterested, subscribing witnesses. However, interested witness is entitled to such portion of the devise or bequest that does not exceed his intestate share. § 51.

NUNCUPATIVE (ORAL) WILL: A nuncupative will conveying personal property not to exceed \$1,000 may be made by military service personnel in actual contemplation of death, or anyone in fear of immediate death from an injury received on the same day. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator to bear witness to his will. § 54.

HOLOGRAPHIC WILL: Valid if written, dated, and signed by the testator. Witnesses are not required. § 53.

MILITARY PROVISIONS: See Nuncupative Will.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise, or bank named executor. § 541.

GUAM

Guardian - Bond not required of a testamentary guardian unless court orders it. § 1485.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident does not qualify as executor. § 420.

Guardian - No statutory provision.

REVOCATION: A will is revoked by subsequent will containing a revocation provision or wholly inconsistent provisions, a subsequent instrument expressing the testator's intent to revoke, or by physical destruction with intent to revoke. §§ 72 to 74.

EFFECT OF SUBSEQUENT DIVORCE: No statutory provision.

SPOUSE'S RIGHT OF ELECTION: No statutory provision.

UNIFORM GIFTS TO MINORS ACT: No.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 296 to 296.8.

CHOICE OF LAWS: The interpretation of wills, wherever executed, is governed, when relating to property within the Territory of Guam, by the laws of Guam, unless an intention clearly appears in the will. § 100.

SELF-PROVING PROVISION: No.

HAWAII

STATUTE: Haw. Rev. Stat. § 560 et seq.

INTESTATE DESCENT & DISTRIBUTION: In addition to dower or curtesy, if there is no surviving issue or parent of the decedent, the surviving spouse inherits the entire estate. If there is surviving issue or parent, the surviving spouse is entitled to one-half of the estate. § 560: 2-102. That one-half of the estate which does not pass to the surviving spouse (or, if there is no surviving spouse, the entire estate), passes as follows: First to the surviving issue of the decedent; second, to the parents of the decedent; third, to the issue of the parents; fourth, to the grandparents of the decedent, or if no surviving grandparents, to the issue of the grandparents; fifth, to the surviving great-grandparents, or if none survive, to the issue of the great-grandparents; sixth to the state. § 560:2-103. For purposes of intestate succession, an adopted child is considered the child of the adopting parents and not the natural parents, except that the adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and the natural parent. § 560:2-109.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 560: 2-501.
- (2) Testamentary Capacity - sound mind. § 560: 2-501.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 560: 2-502.
- (4) Witnesses - 2. § 560: 2-502.

INTERESTED WITNESS: Provisions of a will are not invalid because the will is signed by an interested witness. § 560: 2-505.

NUNCUPATIVE (ORAL) WILL: Prohibited. § 560:502 states that every will shall be in writing.

HAWAII

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond not required unless required by will or the court in the best interest of the estate. § 560: 3-603.

Guardian - Court may require bond. § 560: 5-411.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident does not qualify as executor. § 560: 3-601.

Guardian - Any competent person can be appointed guardian. § 560: 5-204.

Court appointment of Guardian § 560: 5-207.

REVOCATION: By subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke. § 560: 2-507.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions pertaining to ex-spouse unless will expressly provides otherwise. § 560: 2-508.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse has a right of election to take an elective one-third share of the net estate. Election must be made within 9 months after death of testator or 6 months after probate of will, whichever is later. If a married person not domiciled in Hawaii dies, the spouse's elective share in any property in Hawaii other than real property is governed by the decedent's domicile at death. § 560: 2-201.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 553-1 to 553-9.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 534-1 to 534-5.

CHOICE OF LAWS: A written will is valid if executed in compliance with § 560: 2-502 of the laws of Hawaii, or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national. § 560: 2-506.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Estates with a net value of \$1,000 or less may be collected by affidavit. § 560: 3-1201. Estates with a total value of \$20,000 or less may be administered by the clerk of the court of the judicial circuit. § 560: 3-1205.

HAWAII

Hawaii Self-Proving Clause

THE STATE OF _____
COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's last will, that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of their knowledge the testator was at that time eighteen or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal)

(Signed)

(Official capacity of
officer)

Source:
Haw. Rev. Stat. § 560:2-504.

IDAHO

STATUTE: Idaho Code § 15-1-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: I.C. §§ 15-2-102, 103.

(1) Share of the spouse:

(a) As to separate property

-- if there is no surviving issue or parent of the decedent, the entire intestate estate;

-- if there is no surviving issue but the decedent is survived by a parent or parents, the first fifty thousand dollars (\$50,000), plus one-half (1/2) of the balance of the intestate estate;

-- if there are surviving issue all of whom are issue of the surviving spouse also, the first fifty thousand dollars (\$50,000), plus one-half (1/2) of the balance of the intestate estate;

-- if there are surviving issue one (1) or more of whom are not issue of the surviving spouse, one-half (1/2) of the intestate estate.

(b) As to community property:

-- The decedent's half of the community property passes to the surviving spouse.

(2) Share of heirs other than surviving spouse:

The part of the intestate estate not passing to the surviving spouse, or the entire intestate estate if there is no surviving spouse, passes as follows:

-- To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degrees, then those of more remote degree take by representation;

-- If there is no surviving issue, to the decedent's parent or parents equally;

-- If there is no surviving issue or parent, to the issue of the parents or either of them by representation.

IDAHO

-- If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one (1) or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparents on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half. § 15-2-103.

(3) Survival: Any person who fails to survive the decedent by 120 hours is deemed to have predeceased him for the purpose of intestate succession. § 15-2-104.

BASIC WILL REQUIREMENTS:

- (1) Age - 18 or an emancipated minor. § 15-2-501.
- (2) Testamentary Capacity - sound mind. § 15-2-501.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 15-2-502.
- (4) Witnesses - 2. § 15-2-502.

INTERESTED WITNESS: A will or any provision thereof is not invalid because it is signed by an interested witness. § 15-2-505.

NUNCUPATIVE (ORAL) WILL: Prohibited. § 15-2-502.

HOLOGRAPHIC WILL: Valid if the material provisions and signature are in the testator's handwriting; witnesses not required. § 15-2-503.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Personal Representative - Bond not required unless required by the will or unless the court orders it upon a demand by a party with interest in excess of \$1,000. §§ 15-3-603, 15-3-605.

Guardian - Court may require bond. § 15-5-411.

FIDUCIARY RESIDENCY REQUIREMENTS:

Personal Representative - Nonresident qualifies as executor as long as personal representative consents to jurisdiction of the court in any proceeding concerning the state that may be instituted by any interested person. § 15-3-602.

Guardian - Nonresident qualifies as guardian under the same conditions as a personal representative. 15-5-305.

REVOCATION: A will is revoked by subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke. § 15-2-507.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions pertaining to ex-spouse unless will expressly provides otherwise. § 15-2-508.

SPOUSE'S RIGHT OF ELECTION: The surviving spouse can elect to take one-half of the augmented quasi-community property estate. Election must be made within 6 months after publication of notice to creditors. §§ 15-2-201 to 15-2-209.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 68-801 to 68-825.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. § 15-2-613.

CHOICE OF LAW: A written will is valid if executed in compliance with the laws of Idaho, or if its execution complies with the law at the time and place of execution, or of the law of the place where at the time of execution or death the testator is domiciled, has a place of abode, or is a national. § 15-2-506.

SELF-PROVING PROVISION: Yes. For form, see next page.

Small Estate Administration: Estates with a net value of \$5,000 or less may be collected by affidavit. § 15-3-201. Estates with a total value less than the homestead exemption, exempt property,

IDAHO

family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness may be distributed by the personal representative without giving notice to creditors. § 15-3-1203.

Powers of Attorney § 15-5-501.

Idaho Self-Proving Clauses

Clauses to be Used When Will is Simultaneously Executed, Attested and Made Self-Proved:

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____ and _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of his knowledge the testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

IDAHO

The State of _____
County of _____

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn to before
me by _____, and _____, witnesses, this _____ day
of _____, 19____.

(Seal)

(Signed)

(Official capacity of
officer)

Source:
Idaho Code § 15-2-504(a).

Clause to be Used When a Previously Executed and Attested Will is Made Self-Proved:

The State of _____
 County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen (18) years of age or older, of sound mind and under no constraint or undue influence.

 Testator

 Witness

 Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 19____.

(Seal)

 (Signed)

 (Official capacity of
 officer)

Source:
 [I.C. § 15-2-504(b)].

ILLINOIS

STATUTE: Ill. Ann. Stat. ch. 110 1/2 § 1-1 et seq. (Smith-Hurd).

INTESTATE DESCENT & DISTRIBUTION:

Rules of Descent and distribution 2-1:

If the decedent is survived by:

(1) Spouse and descendants: Then 1/2 estate to spouse and 1/2 estate to descendants.

(2) Spouse but no descendants: Then entire estate to the spouse.

(3) Descendant but no spouse: Then entire estate to the descendant.

(4) No spouse or descendants: Then entire estate to the decedent's parents, brothers, sisters or descendants of brothers or sisters in equal share except that if one parent is deceased the surviving parent receives a double share.

(5) Where survivors of the decedent are other than the above, or if it appears that there are no relatives of the decedent, refer to Chapter 110 1/2, para. 2-1.

(6) Illegitimate: The rules for descent of illegitimate decedents are the same as the above except that if such a decedent left no spouse or descendants then the estate is distributed to the mother or descendants of the mother of the decedent. Chap. 110 1/2, para. 2-2.

NOTE: The above rules apply to the personal and real estate of decedents who were residents of Illinois and who died intestate. It also applies to show the distribution of real estate situated in Illinois owned by a non-resident decedent who died intestate.

ILLINOIS

BASIC WILL REQUIREMENTS:

(1) Concerning Testator:

(a) Must be 18 years old, of sound mind and memory and has the power to bequeath by will the property he has at time of death. Chap. 110 1/2, para. 4-1.

(b) Signature must be by the testator. If the testator cannot sign the will, then it can be signed by another person in his presence and at his direction. Chap. 110 1/2, para. 4-3.

(2) Concerning Witnesses:

(a) Signature of the testator must be attested to in the presence of the testator by 2 or more witnesses. Ch. 110 1/2, para. 4-3.

(b) Any interest given to a witness or his spouse is void unless the will is also witnessed by two other disinterested witnesses. Such a witness, however, can still receive the share he would be entitled to in the absence of the will. Ch. 110 1/2, para. 4-3.

(3) Attestation Clause. A will should contain a clause above the signatures of the witnesses, or contained in an affidavit attached to and made a part of the will wherein each of the witnesses attest to the following facts:

(a) That the witness was present and saw the testator or some person in his presence and by his direction sign the will in the presence of the witness, or the testator acknowledged it to the witness as his act;

(b) That the will was attested by the witness in the presence of the testator and;

(c) The witness believed the testator to be of sound mind and memory at the time of the signing or acknowledging the will.

The inclusion of the attestation clause or affidavit is sufficient to admit the will to probate without the necessity of in-court testimony of the witnesses. Chap. 110 1/2, para. 6-4.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Resident Administrator or Guardian - Surety Bond required unless excused by court. Chap. 110 1/2, para. 12-2 and 12-3.

Resident Executor - Surety Bond required unless waived in the will. If a Surety Bond is waived in the will, the representative must still give personal bond. Chap. 110 1/2, para. 12-2 and para. 12-4.

Non-Resident Executor - Surety may be required of an Executor who is a nonresident of Illinois, even though the will excuses surety. Chap. 110 1/2, para. 6-13(c) and para. 12-4.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor, but must appoint an in-state agent for service. Ch. 110 1/2, para. 6-13.

Guardian - Nonresident can be appointed guardian of the person, but not guardian of the estate. Ch. 110 1/2, para. 11-3.

REVOCATION: A will may be revoked only (1) by physical destruction by the testator or someone in his presence and by his direction and consent; (2) by the execution of a later will declaring the revocation; (3) by the execution of a later will but only to the extent that it is inconsistent with the prior will or; (4) by execution of an instrument declaring the revocation and signed and attested to with the same formalities as required for the signing and attestation of a will. Ch. 110 1/2, para. 4-7(a).

DESIGNATION OF A GUARDIAN FOR A DISABLED ADULT: A person while of sound mind and memory may designate in writing a person, corporation or public agency to be appointed as guardian of his person or estate or both in the event he is adjudged a disabled person. Such a document must follow the same rules for the execution and attestation of a will. Ch. 110 1/2, para. 11a-6.

ILLINOIS

LIVING WILL: Effective 1/1/84 Illinois has passed a Living Will Statute. This is a document instructing the declarant's physician to withhold or withdraw life-sustaining procedures in the event the individual is diagnosed as having a terminal condition.

The declaration can be signed by one over the age of 18 and of sound mind; must be witnessed and attested to in the same manner as a will. However, note that the following cannot be a witnesses: a person who signed the declarant's signature for him, one related by blood or marriage, a person entitled to any portion of the estate, either by will or intestate law, or one who is directly financially responsible for the medical care of the declarant. Chap. 110 1/2 para. 701.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids any disposition to former spouse. Ch. 110 1/2, para. 4-7(b).

SPOUSE'S RIGHT OF RENUNCIATION OF WILL: Surviving spouse may elect up to one-third of estate if testator leaves a descendant, or one-half of the estate if no descendant survives. Election must be made within 7 months after admission of the will to probate. Ch. 110 1/2, para. 2-8.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 18 or 21. Ch. 110 1/2, para. § 251-274.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. Ch. 110 1/2, para. 3-1 to 3-2.

CHOICE OF LAWS: A will signed by testator may be admitted to probate in this state when the will has been admitted to probate outside this state or the will was executed outside this state in accordance with the law of this state or the place where executed or of the testator's domicile at time of execution. Ch. 110 1/2, para. 7-1 to 7-6.

SELF-PROVING PROVISION: No.

SMALL ESTATE ADMINISTRATION: Estates with a gross value of \$25,000 or less of personal property may be collected by affidavit. CH 110 1/2 § 25-1.

Statutory Power of Attorney 803-1 (eff. 9/87).

INDIANA

STATUTE: Ind. Code Ann. § 29-1-1 et seq. (Burns).

INTESTATE DESCENT & DISTRIBUTION: If the decedent is survived by at least one child or child of deceased child, the surviving spouse inherits one-half of estate. If the decedent leaves no children, their descendants, or parents, the surviving spouse inherits the entire estate. § 29-1-2-1. Special provision for second or subsequent childless spouses where decedent left surviving a child or children by previous spouse § 29-1-2-1(c); one-third life estate in real property, same share of personal property as a surviving spouse with children would receive, as set forth above.

BASIC WILL REQUIREMENTS:

- (1) Age - 18 or younger if a member of Armed Forces. § 29-1-5-1.
- (2) Testamentary Capacity - sound mind. § 29-1-5-1.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 29-1-5-3.
- (4) Witnesses - 2. Witnesses must sign in the presence of the testator and each other. § 29-1-5-3.

INTERESTED WITNESS: Provisions concerning a witness are void unless will attested by two disinterested witnesses, except that beneficiary is always entitled to amount he or she would have received through intestacy. Not to exceed amount he or she would have received by the will. § 29-1-5-2(c).

NUNCUPATIVE (ORAL) WILL: A person may dispose of personal property up to \$1,000 (or \$10,000 if in the active military in time of war) in value by oral will, provided that he or she is in imminent peril or fear of death and dies as a result of impending peril. Additionally, two disinterested witnesses are required, one of which must reduce will to writing within 30 days of declaration. An oral will does not revoke an existing written will but only changes it to the extent necessary to give effect to the oral provisions. § 29-1-5-4.

HOLOGRAPHIC WILL: Not valid if not properly witnessed. However, if valid where executed, or in domicile of testator, may be admitted to probate even if not witnessed. § 29-1-5-5.

INDIANA

MILITARY PROVISIONS: See Basic Will Requirements (1) Age and Nuncupative (Oral) Will.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond is not required unless required by will or on motion by or to the court. § 29-1-11-1.

Guardian - Bond required, unless court finds bond unnecessary or guardian is a bank or trust company. § 29-3-7-1.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor but is required to appoint resident agent to accept service of process and to post bond. § 29-1-10-1.

Guardian - Nonresident qualifies as guardian. § 29-3-5-5.

REVOCATION: A will may be revoked by an express writing duly executed, or by physical destruction with intent to revoke. § 29-1-5-6. A nuncupative will can be revoked by another nuncupative will. § 29-1-5-7.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions in favor of former spouse. § 29-1-5-8.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may elect to take one-half of net estate. However, if surviving spouse is a second or subsequent spouse who had no issue by decedent and decedent left a child or descendant, then the share is limited to one-third of personal estate plus a life estate in one-third of real property. Election must be made within 10 days after expiration of the time for filing of claims. §§ 29-1-3-1 to 29-1-3-8.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith, intentional wrongdoing, gross negligence or failure to maintain standard of prudence in investing. §§ 30-2-8-1 to 30-2-8-10. For purposes of the Act, "minor" is a person who has not attained an age of 21 years.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous

death. §§ 29-2-14-1 to 29-2-14-8.

CHOICE OF LAWS: A will is legally executed if executed in compliance with the law of this state in force at time of execution or at time of testator's death, or with the law of the place of execution, or the law at the time of execution or at the time of death where the testator is domiciled. § 29-1-5-5.

SELF-PROVING PROVISION: Yes. For two alternative forms, see next two pages.

SMALL ESTATE ADMINISTRATION: Indiana provides both a collection and summary distribution statute. Collection by affidavit available where the gross probate estate, less liens and encumbrances, does not exceed \$8,500. Summary distribution is available where the gross probate estate does not exceed the allowance, costs and expenses of administration and reasonable funeral expenses, less liens and encumbrances. § 29-1-8-1; § 29-1-8-3.

INDIANA

Indiana Self-Proving Clause

UNDER PENALTIES FOR PERJURY, We, the undersigned
_____, _____, and
_____, testator and the undersigned
witnesses respectively, whose names are signed to the foregoing
instrument declare:

- (1) that the testator executed the instrument as his will;
- (2) that, in the presence of both witnesses, the testator
signed or acknowledged his signature already made or directed
another to sign for him in his presence;
- (3) that he executed the will as his free and voluntary act
for the purposes expressed in it;
- (4) that each of the witnesses, in the presence of the
testator and of each other, signed the will as witness;
- (5) that the testator was of sound mind; and
- (6) that to the best of his knowledge the testator was at the
time eighteen (18) or more years of age, or was a member of the
armed forces or the merchant marine of the United States, or its
allies.

Testator

Date

Witness

Witness

Source:
Ind. Code Ann. § 29-1-5-3(b) (Burns).

NOTE: A videotape maybe used to establish validity of the document
29-1-5-3(c) 1989.

Indiana Self-Proving Clause

UNDER PENALTIES FOR PERJURY, We, the undersigned
_____, and
_____, testator and the undersigned witnesses
respectively, whose names are signed to the foregoing instrument
declare:

(1) that the testator executed the instrument and signified
to the witnesses that the instrument is his will;

(2) that, in the presence of both witnesses, the testator
signed or acknowledged his signature already made or directed
another to sign for him in his presence;

(3) that he executed the will as his free and voluntary act
for the purposes expressed in it;

(4) that each of the witnesses, in the presence of the
testator and of each other, signed the will as witness;

(5) that the testator was of sound mind; and

(6) that to the best of his knowledge the testator was at the
time eighteen (18) or more years of age, or was a member of the
armed forces or the merchant marine of the United States, or its
allies.

Testator

Date

Witness

Witness

Source:

Ind. Code Ann. § 29-1-5-3(c) (Burns).

NOTE: A videotape may be used to establish validity of the
document § 29-1-5-3(c) 1989.

IOWA

STATUTE: Iowa Code Ann. § 633.1 et seq. (West).

INTESTATE DESCENT & DISTRIBUTION: If the decedent leaves no issue or issue all of whom are the issue of the surviving spouse, the surviving spouse receives all real property, all personal property that at the time of death was in the hands of the decedent as the head of a family, exempt from execution, and all other personal property which is not necessary for the payment of debts and charges. If the decedent leaves issue, some of whom are not issue of the surviving spouse, the surviving spouse receives one-third of real property; all personal property that at the time of death was in the hands of the decedent as head of the family, exempt from execution; and one-half of all other personal property which is not necessary for payment of debts of charges, and if said property does not equal in value the sum of \$50,000 then to the extent of the entire net estate to make the amount of \$50,000. §§ 633.211 and 633.212.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 633.264.
- (2) Testamentary Capacity - sound mind. § 633.264.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 633.279.
- (4) Witnesses - 2 (any person 16 years of age or older who is competent to be a witness generally in this state). § 633.280.

INTERESTED WITNESS: Provisions concerning a witness are void unless will attested by two disinterested witnesses, except that beneficiary is always entitled to amount he or she would have received through intestacy. § 633.281.

NUNCUPATIVE (ORAL) WILL: Prohibited. § 633.279.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by terms of will or estate's value is less than \$200. Court may require bond for good cause

IOWA

shown at any time. § 633.172.

Guardian - Bond required for conservator of property. Guardian of person not required to file bond with state. § 633.172.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided resident fiduciary also appointed. § 633.64.

Guardian - Nonresident qualifies as guardian subject to same requirements as executor above. § 633.64.

REVOCATION: A will may be revoked in part or in whole by cancelling or destroying the writing with intent to revoke. If revoked by cancellation, two witnesses to the act are required. The execution of a subsequent will also revokes a prior will. § 633.284.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or any form of dissolution of marriage voids all provisions in favor of ex-spouse if the ex-spouse is referred to in the will as being the spouse of the decedent. If the spouse is merely referred to by name, then said person can inherit. § 633.271.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse is entitled to an elective share equal to her intestate share. Election must be made within 4 months of notice by executor to so elect to take or not to take under the will. §§ 633.236, 633.237. If, within that 4-month period, an affidavit is filed stating that the surviving spouse is incapable to make the election, the court will determine whether there shall be an election to take against the will in accordance with § 633.238. Homestead § 633.240.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for transfers to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. § 565B.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 633.523 to 633.528.

CHOICE OF LAWS: A will executed outside this state in accordance with law of either the place of execution or testator's domicile

is deemed legally executed. However, all wills must be in writing and subscribed by testator in order to be given legal effect in this state. § 633.283.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Available where gross estate does not exceed \$50,000 and the surviving spouse and/or child are the sole beneficiaries. Statute also provides that this process is available where the gross estate does not exceed \$15,000, there is not surviving spouse or issue, and the surviving parents are the sole beneficiaries.

IOWA

Iowa Self-Proving Clause

STATE OF _____
COUNTY OF _____

We, the undersigned, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, declare to the undersigned authority that said instrument is the testator's will and that the testator willingly signed and executed such instrument, or expressly directed another to sign the same in the presence of witnesses, as a free and voluntary act for the purposes therein expressed; that said witnesses, and each of them, declare to the undersigned authority that such will was executed and acknowledged by the testator as the testator's will in their presence and that they, in the testator's presence, at the testator's request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the date of such will; and that the testator, at the time of the execution of such instrument, was of full age and of sound mind and that the witnesses were sixteen years of age or older and otherwise competent to be witnesses.

Testator

Witness

Witness

IOWA

Subscribed, sworn and acknowledged before me by
_____, the testator; and subscribed and sworn before me
by _____, and _____, witnesses, this _____ day of
_____, 19_____.

(Seal)

Notary Public, or other
officer authorized to take
and certify acknowledgements
and administer oaths.

Source:
Iowa Code Ann. § 633.279 (West).

KANSAS

STATUTE: Kan. Stat. § 59-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: If the decedent leaves no child or issue of a deceased child, the surviving spouse inherits entire estate. If the decedent leaves a child or issue of a deceased child, the surviving spouse inherits one-half of estate. If the decedent leaves no surviving spouse, child or issue of deceased child, all of his property shall pass to surviving parents. §§ 59-504, 59-507.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 59-601.
- (2) Testamentary capacity - sound mind. § 59-601.
- (3) Signature - testator's signature or signed by someone at the end of the will under testator's direction and in his presence. § 59-606.
- (4) Witnesses - 2. § 59-606.

INTERESTED WITNESS: Provisions concerning a witness are void unless there are two other disinterested witnesses. However, if such witness would have been entitled to a share of the estate by intestacy, then so much of intestate share not exceeding the value of the will provision passes to the witness. § 59-604.

NUNCUPATIVE (ORAL) WILL: A testator in his last sickness may dispose of his personal property by oral will if witnessed by two disinterested persons and reduced to writing 30 days after declaration. § 59-608.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: See Nuncupative (Oral) Will.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by express provision of will, or all interested parties file a written waiver of bond, or executor is a bank having principal place of business in Kansas. §§ 59-1101, 59-1104.

Guardian - Bond required, but may be waived by express provision of will: § 59-3014.

FIDUCIARY RESIDENCY REQUIREMENTS:

KANSAS

Executor - Nonresident qualifies as executor provided resident appointed to accept service of process. § 59-706.

Guardian - Nonresident qualifies as guardian subject to same requirement as executor above. § 59-3014.

REVOCATION: A will is revoked by subsequent marriage of testator, or birth or adoption of a child. A will also may be revoked by a subsequent will or formal writing declaring revocation, or physical destruction with intent to revoke. §§ 59-610, 59-611.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions in favor of ex-spouse. § 59-610.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse may take an elective share equal to intestate share. Election must be filed within 6 months after probate of will. § 59-603. § 59-2233.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. § 38-1701 thru § 38-1726.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 58-701 to 58-707.

CHOICE OF LAW: A foreign will executed in accordance with this act or the law of place of execution, or law of testator's residence either at the time of execution or death, is deemed legally executed provided the will is in writing and signed by testator. § 59-609.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Available where the total assets in the estate of the decedent does not exceed \$10,000. Statute permits the surviving spouse to collect money, not in excess of \$1,000 from bank accounts and personal property subject to the \$10,000 limit. § 59-1507b.

KANSAS

Kansas Self-Proving Clause

STATE OF KANSAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me first duly sworn, said _____, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free and voluntary act and deed for the purposes therein expressed; and the said witnesses, each of his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of each other and in the presence of the testator and at his request, and that said testator at that time possessed the rights of majority, was of sound mind and under no restraint.

Testator

Witness

Witness

KANSAS

Subscribed, acknowledged and sworn to before me by
_____, testator, and _____
and _____, witnesses, this _____ day of
_____, A.D., _____.

(Seal)

(Signed)

(Official capacity of
officer)

Source:

[Kan. Stat. § 59-606].

KENTUCKY

STATUTE: Ky. Rev. Stat. § 391.010 et seq.

INTESTATE DESCENT & DISTRIBUTION: A surviving spouse or infant children is entitled to \$7500.00. A surviving spouse is entitled to an estate in fee of one-half of the surplus real estate; an estate for life in one-third of any real estate unless relinquished by survivor during decedent's life; and an absolute estate in one-half of the surplus personalty left by decedent. The remaining realty and personalty will descend to the decedent's children and their descendants, parents, or siblings. If the decedent is not survived by any of these descendants, the surviving spouse inherits the entire estate. §§ 391.010, 391.030, 392.020.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. KRS § 394.020. (A parent under 18 may appoint a guardian for his or her child. KRS 394.030.)
- (2) Testamentary Capacity - sound mind. KRS § 394.020.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. KRS § 394.040.
- (4) Witnesses - 2. KRS § 394.040.

INTERESTED WITNESS: If a will is attested by a person to whom, or to whose spouse any beneficial interest is bequeathed, such bequest is void unless the witness would be entitled to a share by intestacy, in which case he shall receive so much of his share as does not exceed the value of bequest. KRS § 394.210.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Will must be wholly written and signed by the testator. KRS § 394.040.

MILITARY PROVISIONS: None.

KENTUCKY

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise or court excuses it. KRS § 395.130.

Guardian - Bond required, unless the guardian is for nurture and education or will excuses bond. KRS § 387.070.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided he or she is related to the decedent by consanguinity, marriage, or adoption or is the spouse of such person so related. KRS 395.005.

Guardian - Nonresident qualifies as guardian subject to same requirement as executor above. KRS § 395.005.

REVOCATION: A will may be revoked by a subsequent will or formal writing, or by physical destruction with intent to revoke. A will also will be revoked by marriage of testator unless will expressly provides otherwise. KRS §§ 394.080, 394.090.

EFFECT OF SUBSEQUENT DIVORCE OR ANNULMENT: Divorce or annulment voids disposition to former spouse unless the will contains no devise or bequest to the former spouse. KRS § 394.092.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take an elective share equal to dower right. Election must be made within 6 months after probate. KRS § 392.080.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. KRS §§ 385.011 to 385.252.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. KRS §§ 397.010 to 397.080.

CHOICE OF LAW: The will of a person domiciled out of this state is valid as to his real and personal property

KENTUCKY

in this state, if it is executed according to the law of the place where he was domiciled. KRS § 394.150.

SELF-PROVING PROVISION: Yes. For forms, see next page.

SMALL ESTATES ADMINISTRATION: State has a summary distribution statute which provides for transfer of decedent's assets without administration to the surviving spouse or her designed. Procedure is available when the spouse's exemption alone, or in addition to preferred claims equals or exceeds the amount of the probatable assets. § 395.455.

KENTUCKY

Kentucky Self-Proving Clause (for use when self-proving
clause is executed at same time will is executed)

I, _____, the Testator, sign my name to this
instrument this _____, 19____, and being first
duly sworn, do hereby declare to the undersigned
authority that I sign and execute this instrument as my
last will and that I sign it willingly, that I execute it
as my free and voluntary act for the purposes therein
expressed, and that I am eighteen years of age or older,
of sound mind, and under no constraint or undue
influence.

Signature

We, _____ and _____, the
witnesses, sign our names to this instrument, being first
duly sworn, and do hereby declare to the undersigned
authority that the Testator signs and executes this
instrument as his last will and that he signs it
willingly, and that each of us, in the presence and
hearing of the Testator, and in the presence of the other
subscribing witnesses, hereby signs this will as witness
to the Testator signing, and that to the best of our
knowledge the Testator is eighteen years of age or older,
of sound mind, and under no constraint or undue
influence.

WITNESSES

ADDRESSES

KENTUCKY

THE STATE OF _____)
COUNTY OF _____)

Subscribed, sworn and acknowledged before me by
_____, the Testator, subscribed and sworn
before me by and _____, witnesses, on
_____, 19____.

OFFICIAL CAPACITY OF
OFFICER

My Commission Expires:

Source:
Ky. Rev. Stat. § 394.225a.

KENTUCKY

Kentucky Self-Proving Clause (for use when affidavit is
executed subsequent to execution of will)

THE STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, _____, the testator, declared to me and to the witnesses in my presence that the instrument is his last will and that he had willingly signed or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and each of the witnesses stated to me, in the presence and hearing of the testator, that he signed the will as witness and that to the best of his knowledge the testator was eighteen years of age or over, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn and acknowledged before me by _____, the testator, subscribed and sworn before me by _____ and _____, witnesses, this _____ day of _____, A.D., _____.

(Official capacity of
officer)

Source:
Ky. Rev. Stat. § 394.225b.

LOUISIANA

STATUTE: Donations Mortis Causa. La. Civ. Code Ann. art. 1470 et seq. (West).

INTESTATE DESCENT & DISTRIBUTION: Upon the death of either spouse, one-half of the community property belongs to the surviving spouse pursuant to community property law. Inheritance rights of the surviving spouse differ as between community and separate property. The surviving husband or wife receives only the usufruct of community property if the deceased was survived by any direct descendants. If not, he or she inherits the entire community estate in full ownership. However, the spouse is ranked as to separate property behind parents, siblings, and their descendants and is not entitled to the usufruct of that property.

The deceased's parents and siblings are in the same rank, but the parents receive a joing and successive usufruct, while the siblings are naked owners. If neither parent survives, the siblings take all, in full ownership. If no siblings survive, the parents take all.

Direct descendants inherit by representation of their respective parents' shares where their parents died before the deceased grandfather or other ancestor. Representation occurs only in the direct descending line and in the line of descendants of the deceased's brothers and sisters (i.e., his nephews, grand nephews, etc.). It does not apply to other, more distant collateral heirs.

BASIC WILL REQUIREMENTS:

- (1) Age - 16. Art. 1476, Civ. Code.
- (2) Testamentary Capacity - sound mind. Art. 1475, Civ. Code.
- (3) Signature - must be signed by testator at the bottom of each separate page of the instrument; if he does not know how or is unable to sign, express mention of this must be made in the will. Art. 1579, Civ. Code.
- (4) Witnesses - Depends upon form of testament selected. Generally 2, but if testament is a Nuncupative Will by Public Act, 3 witnesses are required if the will is executed at the place where all the witnesses reside; if

LOUISIANA

not, 5 witnesses are required. If the testament is a Nuncupative Will by Private Act, required number of witnesses is 5 and 7 respectively.

Art. 1624 Mention of Disinherision. The testor must express the reason why he disinherited any forced heirs and the disinherited must prove that this cause did not exist. Proof of reconciliation must be clear, unequivocal.

INTERESTED WITNESS: If a testament is witnessed by an heir or legatee, the testament shall be valid, except as to any legacy to that heir or legatee in the testament. Art. 1592, Civ. Code.

NUNCUPATIVE (OPEN) WILL:

Nuncupative Will by Public Act. This will is a formal notarial act which must be dictated to, received by, and written by hand by a notary public as dictated, then read to testator and signed, all in the presence of three witnesses residing in the place where executed (or five not residing in such place) with no interruptions. Express mention must be made of full compliance with the forms. The notary who receives the will may not make a suggestion with a view to influencing the testamentary disposition. While a certain amount of questioning by the notary is permitted to clarify the testator's intent or to elicit an expression by the testator as to certain matters appropriate to be covered in the will, no such participation by the notary may amount to a suggestion or recommendation. If made by a person who cannot write, express mention must be made of that fact. Such a will is self-proving, thus dispensing with witnesses on probate. (See sample will form #3 infra). Art. 2993, Code Of Civ. Proc.

Nuncupative Will by Private Act. This will must be written by the testator himself (or by another from his dictation) and read to him and then declared by him to be his will in the presence of five witnesses residing in the place where executed (or seven not residing in such place) and signed by the testator. (See sample will form #4 infra). Art. 2884, Code Of Civ. Proc.

HOLOGRAPHIC WILL: Valid if entirely written, signed and dated by the testator, and is subject to no other form. (See sample will form #1 infra). Art. 2883, Code Of Civ. Proc. May be made anywhere even out of state. Art. 1588, Civ. Code.

MILITARY PROVISIONS: Wills of persons employed in armed forces in the field may be received by a commissioned officer in the presence of two witnesses. Such wills are subject to no other formalities other than being reduced to writing and signed by testator. Art. 1597, Civ. Code.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required if executor appointed by court. No bond required of executor named by testator except as required by terms of will. Art. 3153, Civ. Code.

Guardian - Bond required as condition precedent to appointment of guardian nominated by will. Art. 4068, Civ. Code.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided he posts bond and appoints a resident to accept service of process. R.S. § 9:2441.

Guardian - Nonresident qualifies as guardian subject to same requirement as executor above.

REVOCATION: A will is revoked by formal writing, either expressly or by inconsistency. A will also is revoked by a subsequent birth or adoption unless will expressly provides otherwise. Arts. 1691 to 1969, Civ. Code.

Art. 1691. Revocation may be tacit, general or particular. Express when done in writing revoking will or particular disposition, tacit by act which changes will, general when entire will revoked, particular when only certain legacies are affected w/out touching rest. Dispositions are automatically revoke when convicted of killing or altering to kill testator.

EFFECT OF SUBSEQUENT DIVORCE: Divorce and settlement of community property rights do not revoke a will previously made by either spouse. Succession of Cunningham, 142 La. 701, 77 So. 506 (1918).

SPOUSE'S RIGHT OF ELECTION: None. One-half of community property automatically descends to surviving spouse by operation of community property laws.

LOUISIANA

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 18. § 9.751 et seq.

UNIFORM SIMULTANEOUS DEATH ACT: Uniform Act not adopted. In case of common disaster, the presumption of survivorship is determined by the circumstances of fact. In the absence of circumstances of fact, the determination is guided by the probabilities resulting from the strength and difference of sex. Art. 936-939, Civ. Code.

CHOICE OF LAW: A will executed outside this state is enforceable within the state if it appears that the will has been duly proved and admitted to probate outside the state and that it was executed according to the law of the place of execution, or where testator was domiciled at time of execution, or in conformity with the laws of this state. R.S. § 9:2401.

SELF-PROVING PROVISION: No. Attestation clause is required, but merely designed to show compliance with formalities; it is not self-proving.

NOTE: The nuncupative will by public or private act and the sealed or mystic will are complex, and defects in the mandatory forms will invalidate the entire will (though an invalid nuncupative will by public act can sometimes qualify and be held sufficient as a nuncupative will by private act). They require careful study by the legal assistance attorney. Though nuncupative forms obviously have their use where the testator is unable to sign, here the requirements of Louisiana law both as to notarial procedure and will are particularly onerous and exacting. Whenever these forms must be used, further research is recommended if at all possible, and the procedures and forms should be carefully adhered to.

On the other hand, the holographic form is relatively simple and brief, with few opportunities for error. Being entirely in the testator's own handwriting, it has considerable strength. The same is true to a lesser degree of the statutory form. Accordingly, they are recommended in that order for employment by legal assistance officers.

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When the statutory will form is used, the attention of the legal assistance attorney is drawn to the requirement that the will be signed at the bottom of each page by the testator, and that the subscription must include the information set out in the model forms which incorporate the language prescribed by the authorizing statute.

SMALL ESTATE ADMINISTRATION: Available when the gross value of an estate is \$50,000 or less and the decedent's sole heirs are descendants, ascendants, siblings, or both, or surviving spouse.

LOUISIANA

LOUISIANA WILL FORMS

1. Olographic Will. To be entirely written, dated and signed by testator.

I _____ (JOHN DOE) _____, of _____, Louisiana make this my last will and testament, hereby revoking any and all prior wills that I have made.

I bequeath to my children, _____ and _____, that portion reserved by law to them as legitime, that is, _____ (one-half, 1/2*) of the property that I own at my death, to be divided equally between them. I give and bequeath outright to my wife, _____ (JANE DOE) _____, in full ownership all of the disposable portion of my estate, being _____ (one-half, 1/2*) of all of the property that I own at my death.

This will shall not be revoked by the birth of a child to me or by my adoption of any person after the date of this testament. Any child born to me or adopted by me after the date of this testament shall be entitled to his legitimate portion of my estate as provided under the laws of the State of Louisiana.

I confirm the usufruct which my wife, _____ (JANE DOE) _____, enjoys under the law to my interest in the community property which we own at the time of my death.

I name and appoint my wife, _____ (JANE DOE) _____, executrix of my estate with full seisin and without bond.

I appoint _____ attorney to open and close my succession and as attorney for my executrix.

This my will was written, dated and is signed by me at _____, Louisiana, in my own handwriting this _____ day of _____, nineteen hundred and _____.

(Signature)

*[the proportion if there are two or more children; in the event of one child the forced portion is 1/4 and the disposable portion is 3/4]

2. Statutory Will. Two forms of statutory will are given. The first shall be used in the normal

LOUISIANA

situation where the testator is able to sign his full name to the document:

I, JOHN WILLIAM JONES, being of sound mind and legally domiciled in _____, Louisiana, do hereby make this my last will and testament.

1. I do hereby revoke all prior wills and codicils made by me.

2. I direct that all my funeral expenses and lawful debts be paid from my estate as a first charge.

3. I give, devise and bequeath all real and personal property, wherever situated, of which I die possessed, or to which I may be entitled at the time of my death, constituting my interest in the community and my separate property, in accordance with the laws of Louisiana pertaining to forced heirship, to my son, PETER LEE JONES, so that he will receive one-fourth of my property. I also acknowledge a legal usufruct on behalf of my surviving spouse, MARY SUE JONES, over my portion of the community property which we own at the time of my death.

4. I give, devise and bequeath my remaining property, both real and personal, know as my disposable portion, to my wife, MARY SUE JONES, in full ownership, if she shall survive me. In the event that my wife predeceases me, or dies with me in a common accident, I give, devise and bequeath my disposable portion to my son, PETER LEE JONES.

5. This will shall not be revoked by the birth of a child to me or by adoption of any person after the date hereon. Any child born to me or adopted by me after the date of this testament shall be entitled to his legitimate portion as provided under the laws of Louisiana pertaining to forced heirship.

6. I appoint my wife, MARY SUE JONES, the executrix of my last will and testament, with full seisin and without bond. In the event my wife is unable to perform her duties as executrix, I nominate my son, PETER LEE JONES, as executor of my last will and testament, with full seisin and without bond.

7. I appoint _____ attorney to open and close my succession and as my attorney for my executrix.

LOUISIANA

IN WITNESS THEREOF, I have signed this LAST WILL AND TESTAMENT, in the presence of the witnesses and notary hereinafter named and undersigned.

JOHN WILLIAM JONES

Art. 1493. Inter vivos Trusts & Gifts Causa Mortis. Donations Intervivos and Causa Mortis can not exceed $\frac{3}{4}$ of the property of the disposer, if he leaves at his decease, one child under the age of 23 or one child who has been interdicted or is subject to being interdicted because of mental incapacity or physical infirmity; and $\frac{1}{2}$ if he leaves two or more children under the age of 23 or two or more children who have been interdicted or who are subject to being interdicted because of mental incapacity or physical infirmity.

Under the definition of children are included descendants of the first degree who are under the age of 23, or who have been interdicted or who are subject to being interdicted because of mental incapacity or physical infirmity. Representation by descendants shall be remitted provided the child they represent would not have been 23 on the date of the donor's death. Eff. 1 July 1990.

LOUISIANA

STATE OF LOUISIANA
PARISH OF _____

Signed on each of the foregoing _____ pages, and declared by JOHN WILLIAM JONES, the testator (testatrix) above named, in our presence, to be his (her) last will and testament, and in the presence of the testator (testatrix) and of each other, we have hereunto subscribed our names as witnesses on this _____ day of _____, 19_____, at _____ (city-county)/(state)_____, within and for which the undersigned Notary Public is duly commissioned, qualified and sworn.

JOHN WILLIAM JONES

WITNESSES:

(Signature) _____
Typed Name _____

(Signature) _____
Typed Name _____

NOTARY PUBLIC
STATE OF _____
PARISH OF _____
My commission expires: _____

(NOTE: Signature of testator and subscription of Notary and witnesses should appear on the same page. Each page must be signed by the testator.)

If the testator is incapacitated so that he cannot sign his name in full, a statutory will can be prepared for him. The introduction and first seven paragraphs will be the same as in the form given for the normal situation. An eighth paragraph will be added, and the attestation clause and subscription will be changed to read as follows:

8. I am unable to sign this testament because (describe sickness or injury), and will affix my mark below and on each of the pages.

IN WITNESS THEREOF, I have affixed my mark to this LAST WILL AND TESTAMENT, in the presence of the witnesses and Notary hereinafter named and undersigned.

LOUISIANA

(mark)

JOHN WILLIAM JONES

Before us, the undersigned Notary and witnesses, the testator, JOHN WILLIAM JONES, personally appeared and declared that he was unable to sign this testament because (describe sickness or injury). He further declared in our presence that this document is his last will and testament, and then affixed his mark on each of the foregoing _____ pages. In the presence of the testator and each other, we have hereunto subscribed our names as witnesses on this _____ day of _____, 19_____, at (City, Parish, State), within and for which the undersigned Notary Public is duly commissioned, qualified, and sworn.

(mark)

JOHN WILLIAM JONES

WITNESSES:

(signature)

Typed Name

(signature)

Typed Name

NOTARY PUBLIC
STATE OF LOUISIANA
PARISH OF _____
My commissior expires _____

3. Nuncupative Will by Public Act.

STATE OF LOUISIANA
PARISH OF _____

BE IT KNOWN that on this, the _____ day of _____ in the year of Our Lord, one thousand nine hundred and _____

BEFORE ME, _____, a Notary Public, duly commissioned and qualified within and for the Parish of _____, State of Louisiana, and in the presence of _____, _____, competent witnesses of full age, all being residents of and domiciled in the Parish of _____, State of Louisiana, personally came and appeared: JOHN DOE, a person of the full age of majority, domiciled in _____, Louisiana, who declared unto me, Notary, in the presence of the aforementioned witnesses, that he wished me to receive his last will and testament, and he, the said JOHN DOE, testator dictated to me, this, his last will and testament, in the presence of the aforesaid witnesses, and I, Notary, received the same from his dictation and wrote down the same as it was dictated to me in the presence of him, the said testator and the aforesaid witnesses, in the words and figures as follows, to wit:

I, JOHN DOE, being of sound mind and wishing to make proper disposition of my property in case of my death, do make and declare this to be my last will and testament, hereby revoking all prior wills I may have made.

I leave and bequeath all of my property, both real and personal, that I may die possessed of, as follows:

I leave to (Recite all particular legacies. For guidance, see the disposition clauses of the olographic will form.)

All the remainder of my property I leave to (Describe the manner in which the remainder of the property is to be bequeathed.)

This will shall not be revoked by the birth of a child to me or by my adoption of any person after the date of this testament. Any child born to me or adopted by me after the date of this testament shall be entitled to his legitimate portion of my estate as provided under the laws of the State of Louisiana.

I appoint JANE M. DOE as executrix of this, my last will and testament, with full seisin and without bond.

LOUISIANA

I appoint _____ as attorney to open and close my succession and as attorney for my executrix.

This last will and testament of JOHN DOE was dictated by him to me, Notary, in the presence and hearing of the aforesaid witnesses and the same was reduced to writing by me, Notary, as dictated by the said testator.

I, Notary, then read the above will to the said testator in the presence and hearing of the aforesaid witnesses, and the said testator declared to me, Notary, and to said witnesses that he is entirely satisfied therewith.

The whole of this will was received, dictated, written, read and signed by me, Notary, the said testator, and the undersigned witnesses at one time, without interruption and without turning aside to any other act whatsoever.

Thus done, read and signed at the Office of the undersigned notary public* in the City of _____, in the State and Parish aforesaid, on this the _____ day of _____, A.D. 19____.

WITNESSES:**

TESTATOR

NOTARY PUBLIC

My commission expires _____

*[Notarial acts in the State of Louisiana must be passed at the office of the Notary Public, unless good cause be shown why they were not.]

**[The nuncupative testament by public act must be received by a notary public in the presence of three witnesses residing in the place where the will is executed, or five witnesses not residing in the place where the will is executed.]

4. Nuncupative Will by Private Act.

STATE OF LOUISIANA
PARISH OF _____

I, JOHN DOE, being sound in mind and body, do make this my last will and testament, hereby revoking all prior testaments.

I make the following bequests: (Specify in detail the legatees), the particular bequests, and the manner in which the property is to be bequeathed. For guidance, see the dispositive clauses [as well as after born children and administrative paragraphs], of the olographic will form.)

IN TESTIMONY WHEREOF, I have caused this will to be written by _____ from my dictation out of the presence of the undersigned witnesses, all of whom are residents of the City of _____, Parish of _____, State of Louisiana, and have signed the same in my own handwriting, and which last will and testament I presented to the undersigned witnesses and caused it to be read aloud by _____, one of the said witnesses, _____ in presence of me and in presence of the rest of said witnesses on this, the _____ day of _____, A.D. nineteen hundred and _____, and I did declare to them, the said witnesses, that the same is my last will and testament.

THUS DONE AND SIGNED AT _____ in the Parish of _____, State of Louisiana on the day and date above written.

WITNESSES:*

JOHN DOE**

LOUISIANA

*[The nuncupative testament under private signature must be written by the testator himself, or by any other person from his dictation, or even by one of the witnesses, in the presence of five witnesses residing in the place where the will is received or in the presence of seven witnesses residing out of that place.]

**[If the will is written by another at testator's direction, insert the clause, "Written by _____ from the dictation of JOHN DOE said testator."]

MAINE

STATUTE: Me. Rev. Stat. Ann. tit. 18-A, § 1-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: If there is no surviving issue or parent of the decedent, surviving spouse inherits the entire estate. If there is no surviving issue but the decedent is survived by parent(s), the surviving spouse inherits the first \$50,000, plus one-half the balance of the estate. If there are surviving issue all of whom are issue of surviving spouse, the surviving spouse inherits the first \$50,000, plus one-half the balance of the estate. If there are surviving issue, one or more of whom are not issue of surviving spouse, the surviving spouse inherits one-half of the estate. Tit. 18-A, § 2-102.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. Tit. 18-A, § 2-501.
- (2) Testamentary Capacity - sound mind. Tit. 18-A, § 2-501.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. Tit. 18-A, § 2-502.
- (4) Witnesses - 2. Tit. 18-A, § 2-502.

INTERESTED WITNESS: A will or provision thereof is not invalid because it is signed by interested witness. Tit. 18-A, § 2-505(b).

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Valid if signature and all material provisions are in the handwriting of the testator. Tit. 18-A, § 2-503.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - No bond required for informal proceedings unless requested by interested party or creditor with claim in excess of \$1000.00. Bond may be required by the court for formal proceedings unless will provides otherwise. Tit. 18-A, § 3-603.

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Guardian - No bond required.

Conservator - Court may require bond conditioned upon faithful discharge of duties of trust (permissive). Tit. 18-A, § 5-411.

Note: Guardian is responsible only for the person of the ward and up to \$5,000.00 of the ward's property. Conservator is responsible for managing the property of the ward. Tit. 18-A §§ 5-103, 5-209.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as personal representative provided resident appointed to accept service of process. Tit. 18-A, § 3-602.

Guardian - Nonresident qualifies as guardian subject to same requirement as executor above. Tit. 18-A, § 5-206.

Conservator - Nonresident qualifies as conservator. Tit. 18-19, § 5-4.

REVOCATION: A will or any part thereof is revoked by a subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke. Tit. 18-A, § 2-507.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions pertaining to ex-spouse. Tit. 18-A, § 2-508.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take an elective share equal to one-third of the augmented estate. (See section 2-202 for explanation of "augmented".) Election must be made within 9 months after date of death or 6 months after probate of will, whichever is later. Tit. 18-A, § 2-205. Spouse is also entitled to homestead exemption, § 2-401; exempt property, § 2-402; and family allowance, § 2-403.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. Tit. 33, § 1651 et seq.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the

testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. Tit. 18-A, § 2-805.

CHOICE OF LAW: A written will is valid if executed in accordance with law of this state or with law at time of execution of place where will is executed, or with law of place where at the time of execution or at time of death the testator is domiciled, has a place of abode, or is a national. Tit. 18-A, § 2-506.

SELF-PROVING PROVISION: Yes. For form, see next page.

STATUTORY WILL PROVISIONS: Maine has enacted legislation which recognizes the validity of a statutory "fill-in-the-blank" will as long as it complies with the provisions of the statute. The required notice and a will form which complies with the statute have been provided in camera ready form. The notice and form follow the Self-Proving Clause.

SMALL ESTATE ADMINISTRATION: Collection of personal property of decedent by affidavit is permitted if the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$10,000. Tit. 18-A, § 3-1201. The personal representative, without giving notice to creditors, may disburse and distribute the estate to the persons entitled thereto if it appears that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance,

MAINE

exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent. Tit. 18-A, § 3-1203.

Maine Self-Proving Clause

I, _____, the testator, on this _____ day of _____, 19_____, being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), as my free and voluntary act and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, _____, the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as his last will and that he signed it willingly (or willingly directed another to sign for him), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

Witness

Witness

MAINE

The State of _____

County of _____

Subscribed, sworn to and acknowledged before me by
_____, the testator and subscribed and sworn
to before me by _____, and _____,
witnesses, this _____ day of _____.

(Seal)

(Signed)

(Official capacity of
officer)

Source:

Me. Rev. Stat. Ann. tit. 18-A, § 2-504.

MAINE

§ 2-514. Statutory wills

(a) Any person may execute a will on the following form and the will shall be presumed to be reasonable. This section does not limit any spousal rights, rights to exempt property or other rights set forth elsewhere in the Maine Probate Code.

MAINE STATUTORY WILL NOTICE

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD CONSULT A LAWYER AND ASK HIM TO EXPLAIN IT TO YOU.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S ELECTIVE SHARE, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS MAINE STATUTORY WILL. YOU SHOULD MARK THROUGH ALL SECTIONS OR PARTS OF SECTIONS WHICH YOU DO NOT COMPLETE. YOU MAY REVOKE THIS MAINE STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

6. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

7. IF YOU HAVE ANOTHER CHILD AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

8. THIS WILL IS NOT VALID UNLESS IT IS SIGNED BY AT LEAST TWO WITNESSES. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

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9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. IF YOU HAVE ANY DOUBTS WHETHER OR NOT THIS WILL ADEQUATELY SETS OUT YOUR WISHES FOR THE DISPOSITION OF YOUR PROPERTY, YOU SHOULD CONSULT A LAWYER.

MAINE STATUTORY WILL OF

(Print your name)

Article I. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of my property

2.1. REAL PROPERTY. I give all my real property to my spouse, if living; otherwise it shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific real property to the person(s) named:

(name)	(description of item)	(signature of will maker)
--------	-----------------------	---------------------------

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.2. PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific items to the person(s) named:

(name)	(description of item)	(signature of will maker)
--------	-----------------------	---------------------------

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

MAINE

2.3. CASH GIFT TO CHARITABLE ORGANIZATIONS OR INSTITUTIONS: I make the following cash gift(s) to the named charitable organizations or institutions in the amount stated. If I fail to sign this provision, no gift is made. If the charitable organization or institution does not survive me or accept the gift, then no gift is made.

(name)	(amount)	(signature of will maker)
--------	----------	---------------------------

_____	_____	_____
_____	_____	_____
_____	_____	_____

2.4. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause by placing my initials in the box in front of the letter "A", "B" or "C" signifying which clause I wish to adopt. I place my signature after clause "A" or clause "B", or after each individual distribution in clause "C". If I fail to sign the appropriate distribution(s) or if I sign in more than one clause or if I fail to place my initials in the appropriate box, this paragraph 2.4 will be invalid and I realize that the remainder of my property will be distributed as if I did not make a will.

Property Disposition Clauses. (select one).

_____ A. I leave all my remaining property to my spouse, if living. If not living, then in equal shares to my children and the descendants of any deceased child.

(signature of will maker)

_____ B. I leave the following stated amount to my spouse _____ and the remainder in equal shares to my children and the descendants of any deceased child. If my spouse is not living, that share shall be distributed in equal shares to my children and the descendants of any deceased child.

(signature)

_____ C. I leave the following stated amounts to the persons named:

(name)	(amount)	(signature of will maker)
--------	----------	---------------------------

_____	_____	_____
-------	-------	-------

MAINE

(name) _____	(amount) _____	(signature of will maker) _____
(name) _____	(amount) _____	(signature of will maker) _____
(name) _____	(amount) _____	(signature of will maker) _____
(name) _____	(amount) _____	(signature of will maker) _____

2.5 UNDISTRIBUTED PROPERTY. If I have any property which, for any reason, does not pass under the other parts of this will, all of that property shall be distributed as follows: (Draw a line through any unused space.)

(this paragraph only valid if signed)

Article 3. Nomination of guardian, conservator and personal representative

3.1 GUARDIAN. (If you have a child under 18 years of age, you may name at least one person to serve as guardian for the child.)

If a guardian is needed for any child of mine, then I nominate the first guardian named below to serve as guardian of that child. If the person does not serve, then the others shall serve in the order I list them. My nomination of a guardian is not valid without my signature.

FIRST GUARDIAN _____	_____
	(signature of will maker)
SECOND GUARDIAN _____	_____
	(signature of will maker)
THIRD GUARDIAN _____	_____
	(signature of will maker)

MAINE

3.2 CONSERVATOR. (A conservator may be named to manage the property of a minor child. You do not need to name a conservator if you wish the guardian to act as conservator. If you wish to name a conservator in addition to a guardian, complete this paragraph, 3.2. If you do not wish to name a separate conservator, do not complete this paragraph.)

I nominate the first conservator named below to serve as conservator for any minor children of mine. If the first conservator does not serve, then the others shall serve in the order I list them. My nomination of a conservator is not valid without my signature.

FIRST CONSERVATOR _____.
(signature of will maker)

SECOND CONSERVATOR _____.
(signature of will maker)

THIRD CONSERVATOR _____.
(signature of will maker)

I sign my name to this Maine Statutory Will on _____
(date)
at _____ in the State of _____
(city)

Your signature

STATEMENT OF WITNESSES (You must have two witnesses.)

Each of us declares that the person who signed above willingly signed this Maine Statutory Will in our presence or willingly directed another to sign it for him or her or that he or she acknowledged that the signature on this Maine Statutory Will is his or hers or that he or she acknowledged that this Maine Statutory Will is his or her will and we sign below as witnesses to that signing.

MAINE

Signature of witness one _____.
Printed name _____.
Address _____.

Signature of witness two _____.
Printed name _____.
Address _____.

(b) Forms for executing a statutory will shall be provided at all Probate Courts for a cost equivalent to the reasonable cost of printing and storing the forms. A statutory will shall be deemed to be valid if the blanks are filled in with a typewriter or in the handwriting of the person making the will. Failure to complete or mark through any section or part of a section in the statutory will shall not invalidate the entire will. Failure to sign any section or part of a section in the statutory will requiring a signature shall only invalidate the part not signed, except as specifically provided in paragraph 2.4.

MARYLAND

STATUTE: Estates and Trusts, Annotated Code of Maryland.

INTESTATE DESCENT & DISTRIBUTION:

- (1) General.-- The share of a surviving spouse shall be as provided in this section.
- (2) Surviving minor child.-- If there is a surviving minor child, the share shall be one half.
- (3) No surviving minor child, but surviving issue.-- If there is no surviving minor child, but there is surviving issue, the share shall be the first \$15,000 plus one-half of the residue.
- (4) No surviving issue, but surviving parent.-- If there is no surviving issue but a surviving parent, the share shall be the first \$15,000 plus one-half of the residue.
- (5) No surviving issue or parent.-- If there is no surviving issue or parent, the share shall be the whole estate. § 3-102.

BASIC WILL REQUIREMENTS: (4-102)

- (1) Age - 18. § 4-101.
- (2) Testamentary Capacity - sound mind. § 4-101.
- (3) Signature - testator's signature or signed by someone under testator's express direction and in his presence. § 4-102.
- (4) Witnesses - 2 or more credible witnesses in presence of testator. § 4-102.

INTERESTED WITNESS: A will or any provision thereof is not invalid because it is signed by an interested witness. Leitch v. Leitch, 114 Md. 336, 79 A. 600 (1911).

NUNCUPATIVE (ORAL) WILL: Prohibited.

MARYLAND

HOLOGRAPHIC WILL: Prohibited. See Military Provisions for exception.

MILITARY PROVISIONS: A will entirely in the handwriting of testator who is serving in the armed forces is a valid will, even if there are no attesting witnesses, if signed by testator outside territorial limits of the United States. Will is void 1 year after discharge from service unless testator has died prior to expiration date of the year or loses testamentary capacity during said period. § 4-103.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise or waived by all interested parties. Court may require bond upon petition by interested person or creditor showing good cause. Bond should be given to secure payment of debts, Maryland inheritance taxes, and taxes on commissions. (6-102)

Guardian - Bond required unless instrument nominating guardian provides otherwise. § 13-208.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided resident appointed to accept service of process. § 5-105(6).

Guardian - Nonresident qualifies as guardian subject to same requirement as executor above. § 13-707(d).

REVOCATION: A will or any part thereof may be revoked by a subsequent will, either expressly or by implication, or by physical destruction with intent to revoke. Additionally, a subsequent marriage followed by the birth, adoption, or legitimation of a child by the testator provided such child or his descendant survives the testator, § 4-105.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions relating to former spouse unless will expressly provides. § 4-105.

SPOUSE'S RIGHT OF ELECTION: If testator is survived by issue, the surviving spouse may take elective share equal to one-third of net estate. If no surviving issue, the surviving spouse may take share equal to one-half of net estate. (§ 3-203). Election must be made no later than

30 days after expiration of time for filing claims. § 3-206.

§ 3-206. Election by surviving spouse shall not be made later than 7 months after the date of the first appointment of a personal representative under the will. (Eff. 1989).

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith, intentional wrongdoing gross negligence or failing to maintain proper prudence in investing. § 13-305. NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 18 unless donor stipulates 21. §§ 13-301 to 13-310.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. Cts. & Jud. Proc. Ann. Code §§ 10-801 to 10-807.

CHOICE OF LAW: A will executed outside this state is properly executed if it is in writing, signed by testator and executed in conformity with this state's law or the law of the testator's domicile or the place where the will is executed. § 4-104.

SELF-PROVING PROVISION: No. But see § 5-303 which provides a presumption of due execution if the will appears to have been properly executed and contains a recital by the attesting witnesses of the facts constituting due execution.

SMALL ESTATE ADMINISTRATION: Maryland provides an informal administration plan for a gross estate of \$20,000 or less in property subject to administration. Both real and personal property may be administered under this plan. No administration at all is required when the estate is limited to two motor vehicles. The vehicles may be transferred to whom entitled if all debts and taxes have been satisfied. § 5-601.

MASSACHUSETTS

STATUTE: Mass. Gen. Laws Ann. ch. 190, § 1 et seq. (West).

INTESTATE DESCENT & DISTRIBUTION: If decedent leaves a spouse, kindred and no issue, and the whole estate does not exceed \$200,000, the surviving spouse inherits the whole estate. If the estate exceeds \$200,000, the surviving spouse inherits the first \$200,000 plus one-half the balance of estate in addition to dower or curtesy. If the decedent leaves issue, the surviving spouse inherits one-half of personal and real property, in addition to dower or curtesy. Ch. 190, § 1. If a claim is made under the laws of intestacy and dower or curtesy is claimed, then the dower or curtesy is in lieu of the intestacy interest in the realty.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. Ch. 191, § 1.
- (2) Testamentary Capacity - sound mind. Ch. 191, § 1.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. Ch. 191, § 1.
- (4) Witnesses - 2. Ch. 191, § 1.

INTERESTED WITNESS: Provisions concerning a witness or the spouse of such witness are void unless there are two disinterested witnesses to the will. Ch. 191, § 2.

NUNCUPATIVE (ORAL) WILL: Prohibited. See Military Provisions for exception.

HOLOGRAPHIC WILL: Prohibited. However, if the will was executed in a jurisdiction where holographic wills are recognized, it will be valid in Massachusetts by force of statute. Ch. 191, § 5.

MILITARY PROVISIONS: A soldier in actual military service or mariner at sea may dispose of personal property by oral will. Ch. 191, § 6.

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FIDUCIARY BOND REQUIREMENTS: In Massachusetts a fiduciary must always be bonded. If a will exempts a fiduciary from bond, it will be interpreted as an exemption from sureties thereon.

Executor - Surety required unless waived by express terms of the will or all interested parties certify their consent to waive surety. Ch. 205, §§ 1,4,5.

Guardian - Same requirement as for executor above. Ch. 205, §§ 1,5.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided resident appointed to accept service of process. Ch. 195, §8.

Guardian - Nonresident qualifies as guardian subject to same requirement as executor above. CH. 201, § 49.

REVOCATION: A will may be revoked by another writing executed in same manner as will, by physical destruction with intent to revoke, or by subsequent changes in circumstances by operation of law. Ch. 191, § 8.

EFFECT OF SUBSEQUENT DIVORCE: Ex-spouse is treated as having predeceased the testator. Ch. 191, § 9.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take an election share equal to one-third of real and personal property if the decedent left issue. However, if decedent left kindred but no issue, the elective share is \$25,000, plus life estate in one-half of remaining real and personal property. If decedent leaves no kindred or issue, the elective share is \$25,000 plus one-half remaining estate. Election must be made within 6 months after probate. Ch. 191, § 15.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith, gross negligence, intentional wrongdoing. Ch. 201A §§ 1 to 24.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will living trust, deed, or contract of insurance, for devolution of his property in the event of simultaneous death. Ch. 190A §§ 1 to 8.

CHOICE OF LAW: A written will subscribed by testator is deemed legally executed if executed in accordance with the law of either the place of execution or testator's domicile. Ch. 191, § 5.

SMALL ESTATE ADMINISTRATION: Personal property not exceeding \$15,000 may be collected through informal administration by the surviving spouse, child, grandchild, sibling, niece, nephew, aunt, or uncle. Ch. 195 § 16.

SELF-PROVING PROVISION: If it appears to the probate court, by the consent in writing of the heirs, or by other satisfactory evidence, that no person interested in the estate of deceased person intends to object to the probate of an instrument purporting to be the will of such deceased, the court may grant probate thereof: (i) upon the testimony of one of the subscribing witnesses; and the affidavit of such witness taken before the register or an assistant register of probate may be received as evidence; (ii) without testimony if it is self-proved by affidavits of the testator and of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where executed, under official seal, in form and content substantially as follows: State of _____, County of _____, before me, the undersigned authority on this day personally appeared the testator and the witnesses whose names are signed to the attached or foregoing instrument, and, all of these persons being by me duly sworn; the testator declared to me and to the witnesses in my presence that the instrument is his last will and that he had willingly signed or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and each of the witnesses stated to me, in the presence of the testator, that he signed the will as witness and that to the best of his knowledge the testator was eighteen

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years of age or over, of sound mind and under no
constraint or undue influence.

(Testator)

(Witness)

(Witness)

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Subscribed and sworn to before me by the said testator and the said witnesses, this _____ day of _____ A.D. (signed) _____ (SEAL) official capacity of officer; or (iii) without testimony if the probate of such instrument is assented to in writing by the widow or husband of the deceased, if any, and by all the heirs at law and next of kin. Ch. 192, § 2.

Or (iii) without testimony if it is executed, attested and made self-proved by affidavits of the testator and the witness, each affidavit being made before an officer authorized to administer oaths under the laws of the state where executed, and under official seal. The same signature shall be sufficient for the execution, or attestation and the affidavit. The form and consent shall be substantially as follows:

I, the undersigned testator, do hereby declare that I sign (or direct another to sign for me) and execute this instrument as my last will, that I sign it willingly (or willingly direct another to sign for me) in the presence of each of said witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed.

Testator

We, the undersigned witnesses, each do hereby declare in the presence of the aforesaid testator that the testator signed (or directed another to sign for him and said person signed for him) and executed this instrument as his last will in the presence of each of us, that he signed it willingly (or willingly directed another to sign it for him), that each of us hereby signs this will as witness in the presence of the testator, and that to the best of our knowledge the testator is (18) years of age or over, of sound mind, and under no constraint or undue influence.

Witness

Witness

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State of _____

County of _____

Subscribed, sworn to and acknowledged before me by the
testator and witnesses, this ____ day of _____, A.D.

Signed: _____

Seal: _____

Or (iv) without testimony if the probate court of such
instrument is asserted to in writing by the widow or
widower of the deceased, if any, and by all the heirs at
law and next of kin.

Uniform Statutory Will Act. 1910 § 1 et seq.

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Massachusetts Proof of Will

State of _____)
County of _____) Proof of Will

Before me, the undersigned authority, on this day personally appeared the testator and the witnesses whose names are signed to the attached or foregoing instrument, and, all of these persons being by me duly sworn; the testator declared to me and to the witnesses in my presence that the instrument is his last will and that he had willingly signed or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and each of the witnesses stated to me, in the presence of the testator, that he signed the will as witness and that to the best of his knowledge the testator was eighteen years of age or over, of sound mind and under no constraint or undue influence.

TESTATOR

WITNESS

WITNESS

Subscribed and sworn to before me by the said testator and the said witnesses, this _____ day of _____ A.D.

(SEAL)

NOTARY

My commission expires _____.

MICHIGAN

STATUTE: Mich. Comp. Laws Ann. § 700.1 et seq.

INTESTATE DESCENT & DISTRIBUTION: In the absence of a surviving issue or parent of the decedent, the surviving spouse inherits the entire estate. If there are surviving issue of the marriage, or a parent and no surviving issue, the surviving spouse is entitled to the first \$60,000 plus one-half of the balance of the intestate estate and the surviving issue or parent shall receive the remainder. § 700.105. If surviving issue, one or more of whom are not the issue of surviving spouse, spouse takes one-half only.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 700.121.
- (2) Testamentary Capacity - sound mind. § 700.121.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 700.122.
- (4) Witnesses - 2. § 700.122.

INTERESTED WITNESS: Provisions concerning an interested witness are void unless there are two additional disinterested witnesses. However, an interested witness is entitled to such portion of the devise or bequest that does not exceed his intestate share. A mere charge for debts against estate does not make witness "interested." § 700.122.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Valid if written, dated, and signed by the testator. Material provisions must be in testator's handwriting. § 700.123.

MILITARY PROVISIONS: None.

MICHIGAN

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless excused by will or by consent of all parties in interest. § 700.502.

Guardian - Bond not required unless required by will or by court for cause. §§ 700.461, 700.471.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident appointed by will qualifies as executor provided he appoints resident to accept service of process. § 700.531.

Guardian - Nonresident qualifies as guardian and subjects himself to jurisdiction of the court. §§ 700.426, 700.531.

REVOCATION: A will is revoked by subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke. § 700.124.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions pertaining to ex-spouse unless will provides otherwise. § 700.124.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse can elect to take one-half of the spouse's intestate share, reduced by one-half of the value of all property received from the decedent by means other than testate or intestate succession (*i.e.* insurance proceeds, etc.). Election must be made within 60 days after entry of order closing estate to claims. § 700.282.

UNIFORM GIFT TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 554.451 to 554.461.

SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will, living trusts, deeds or contracts of insurance, for devolution of his property in the event of simultaneous death. §§ 720.101 to 720.108.

CHOICE OF LAWS: A will is valid if executed in compliance with the laws of Michigan or with the law of a particular state selected by the testator in his instrument if not contrary to the provisions of Michigan law concerning elective share, exempt property, or allowances, or the public policy of this state. § 700.133.

SELF-PROVING PROVISION: No.

SMALL ESTATE ADMINISTRATION: If the estate of a deceased person consists of property of the value of \$5,000 or less, the court may issue an order that the property be turned over to the surviving spouse, if any. § 700.102. When a petition is made to the court for the administration of a small estate and it appears from the petition, investigation and testimony that the value of the gross estate, less liens and encumbrances, is not more than the sum of exemptions and allowances provided for the surviving spouse and minor children, the court may grant administration of the estate, without prior notice. § 700.101.

Michigan Statutory Will 700-123(c).

MINNESOTA

STATUTE: Minn. Stat. Ann. Chapters 524, 525, 527 (West).

INTESTATE DESCENT & DISTRIBUTION: If there is a surviving spouse but no issue, the entire estate passes to the surviving spouse. If there is a spouse and surviving issue of spouse and decedent, the spouse receives the first \$70,000 of the estate plus one-half of the balance of the intestate estate. If there is a surviving spouse and one or more issue of the decedent that are not issue of the surviving spouse, the surviving spouse receives one-half of the estate. § 524.2-102. Heirs other than surviving spouse: the portions of the intestate estate not passing to the surviving spouse as above, are divided equally to issue of the decedent and others equally by right of representation. If there are no surviving issue, the estate passes to the parent or parents equally. If there are no surviving issue or parents then to issue of the parents or either of them by right of representation. If there are none of the above then to kin in equal degree, except where two of equal degree claim through different ancestors, then to kin claiming through the nearest ancestor takes to the exclusion of all others. § 524.2-103. Other provisions: The Homestead; if there is a surviving spouse and no consent to other disposition in writing and no surviving child or issue, the spouse receives the entire homestead. If the spouse and a child or issue of a deceased child survives then a life estate to the spouse and the remainder to the surviving children or issue of surviving children. § 525.145. Wearing apparel, and as selected by the surviving spouse, furniture and household goods not exceeding \$6,000 in value and other personal property not exceeding \$3,000. (§ 525.15) If the \$6,000 in furniture and household goods and \$3,000 in other personal property amounts to all of the personal estate of the decedent and the decedent had an automobile, the surviving spouse also gets the automobile. (§ 525.15(2)) Maintenance of \$500/mo for 1 year may be paid by the personal representative. (§ 525.151)

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 524.2-501.
- (2) Testamentary Capacity - sound mind. § 524.2-501.

MINNESOTA

(3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 524.2-502.

(4) Witnesses - 2. § 524.2-502.

INTERESTED WITNESS: A will or any part thereof is not invalid because the will is attested by an interested witness. § 524.2-505(b).

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Personal Representative - No bond is required in informal proceedings, except upon the appointment of a special administrator or required by the will, or bond is demanded by a person or persons with an interest in the estate in excess of \$1,000. § 524.3-603.3-605. In formal proceedings no bond is required if the will relieves the personal representative or if all interested persons with interest over \$1,000 (excluding creditors) waive the bond in writing. In other formal proceedings a bond or collateral deposit is required. § 524.3-603.

Guardian - Bond required is set by the court. § 525.551.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor, but subjects himself to jurisdiction of the court. §§ 524.3-203, 524.3-602.

Guardian - Nonresident qualifies as guardian. § 525.6175.

Testamentary Trustee: Effective August 1, 1985, qualification by a court of a testamentary trustee is not required before distributions can be made by a personal representative to the trustee unless qualification is expressly requested by will or demanded by an interested party in writing or by petition to probate court. Ch. 10, 1985 Reg. Sess. Laws, amending § 524.3-913.

REVOCATION: A will or any part thereof may be revoked either expressly or by inconsistency or by physical destruction with intent to revoke. § 524.2-507.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions as to ex-spouse unless will expressly provides otherwise. § 524.2-508, 524.2-802.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take elective share equal to one-third of the augmented estate as defined by § 524.2-202, § 524.2-201. Election must be made in writing within 9 months of date of death, or within 6 months of the probate whichever is later. § 524.2-205.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 527.21 to 527.44.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. § 525.93.

CHOICE OF LAW: A written will is valid if executed in compliance with the law of this state, or the law at the time of execution of the place where the will is executed, or in compliance with the law where at the time of execution or death the testator is domiciled. § 524.2-506.

INTERNATIONAL WILLS: Minnesota has enacted the Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. See § 524.2-1001 - 524.2-1010. This statute recognizes a will as valid, irrespective of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the requirements of § 524.2-1002 to § 524.2-1005.

MINNESOTA

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Collection by affidavit is available when the value of the entire probate estate, wherever located, less liens and encumbrances, does not exceed \$5,000. § 524.3-1201. Summary administrative procedure is available when the value of the entire estate does not exceed exemptions and allowances, costs of administration, reasonable funeral expenses, and reasonable and necessary final hospital and medical expenses. § 524.3-1203.

Minnesota Self-Proving Clause

THE STATE OF _____
COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will, that he signed it willingly or directed another to sign it for him, that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of testator, signed the will as witnesses, and that to the best of their knowledge the testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____, 19____.

(Seal)

(Signed)

(Official capacity of
officer)

Source:
Minn. Stat. Ann. § 524.2-504 (West).

MISSISSIPPI

STATUTE: Miss. Code Ann. § 91-1-1 - § 91-19-19.

INTESTATE DESCENT & DISTRIBUTION: If the decedent is survived by children or their descendants, the surviving spouse inherits a child's share of the estate. If no children or their descendants survive the decedent, the surviving spouse inherits the entire estate. Where there are surviving children, the children take in equal parts. §§ 91-1-3, 91-1-7, 91-1-11.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 91-5-1.
- (2) Testamentary capacity - sound and disposing mind. § 91-5-1.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 91-5-1.
- (4) Witnesses - 2. § 91-5-1.
- (5) Executors or administrators must be age 18 or older. § 91-7-37.

INTERESTED WITNESS: Provisions concerning a witness are void. The witness, if entitled, can take up to the intestate share, not exceeding the devise or bequest in the will. § 91-5-9.

NUNCUPATIVE (ORAL) WILL: Will must be made in time of the last sickness, at the decedent's habitation, or place where testator became ill if away from home, and it must be proved by two witnesses when the value bequeathed exceeds \$100. §§ 91-5-15, 91-5-17, 91-5-19.

HOLOGRAPHIC WILL: Valid if wholly written and subscribed by the testator. § 91-5-1; Better v. Hirsch, 115 Miss. 614, 76S.555.

MILITARY PROVISIONS: Active duty service members 18 or older may devise real and personal property by oral or written will. § 91-5-21.

MISSISSIPPI

FIDUCIARY BOND REQUIREMENT:

Executor - Bond not required unless testator directs by will.
§ 91-7-45.

Guardian - Bond required unless will expressly provides otherwise.
§ 93-13-17.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor. § 91-7-89.

Guardian - Nonresident qualifies as guardian. § 93-13-9.

REVOCATION: A will is revoked by subsequent will or formal written declaration, by physical destruction with intent to revoke, or the birth of an afterborn child not provided for in the will. § 91-5-3.

EFFECT OF SUBSEQUENT DIVORCE: Divorce does not revoke a will executed during the marriage. McKnight v. McKnight, 267 S.2d 315.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse can elect to take the spouse's intestate share; however, such share shall not exceed one-half of the decedent's estate. Election must be made within 90 days after probate. § 91-5-25.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 91-19-1 to 91-19-19.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 91-3-1 to 91-3-15.

CHOICE OF LAW: A will is valid if executed in accordance with the laws of Mississippi or in accordance with the laws of the place where executed. § 91-7-33.

SELF-PROVING PROVISION: No.

ARMED FORCES MIAS: Appointment of guardian when service member is reported missing in action or captured by an enemy. § 93-13-161.

SMALL ESTATE ADMINISTRATION: Collection by affidavit is available when the value of the decedent's personal property does not exceed \$20,000, less liens and encumbrances. § 91-7-322. Mississippi

MISSISSIPPI

does not provide any particular summary procedures for administering small estates. However, a form of summary distribution is provided for testate estates, not exceeding \$10,000, exclusive of exempt and real property. § 91-5-35.

MISSOURI

STATUTE: Mo. Ann. Stat. § 474.010 et seq. (Vernon).

INTESTATE DESCENT & DISTRIBUTION: The surviving spouse, if any, shall receive:

(a) the entire estate if there is no surviving issue or parent.

(b) the first \$20,000 plus one-half of the balance of the estate if the decedent is survived by parent(s) but not issue or if the decedent is survived by issue all of whom are also issue of the surviving spouse.

(c) One-half of the estate if the decedent is survived by any issue who is not also the issue of the surviving spouse.

The portion of the estate not going to a surviving spouse is distributed to:

(a) children or their descendants in equal parts.

(b) If there are no children or descendants, then to the decedent's father, mother, brothers and sisters or their descendants in equal parts.

(c) If neither of the above apply, then the estate is distributed to more distant relatives, if any, or escheats to the State if no living relatives. § 474.010.

BASIC WILL REQUIREMENTS:

(1) Age - 18. § 474.310.

(2) Testamentary Capacity - sound mind. § 474.310.

(3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 474.320.

(4) Witnesses - 2. § 474.320.

INTERESTED WITNESS: Will is not invalidated because it is attested by interested witness. However, interested witness forfeits any amount in excess of what he or she would have received had testator died intestate, unless the will is also attested by two disinterested witnesses. § 474.330.

MISSOURI

NUNCUPATIVE (ORAL) WILL: A person in imminent peril of death may dispose of personal property up to \$500 provided that testator dies as a result of imminent peril. Further requirements include two disinterested witnesses, reduction to writing within 30 days of declaration by witness or person under his or her direction, and submission to probate within six months after death. A nuncupative will does not revoke or change a valid written will. § 474.340.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: No specific provision. See Nuncupative (Oral) Will.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by express terms of will or deemed unnecessary by the court. § 473.160.

Guardian - No bond required. § 475.100.

Conservator of estate of minor or disabled person - Bond required unless waived by express terms of will. § 475.100.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident will qualify as executor, provided he designates an in-state agent to receive service of process. § 473.117.

Guardian - Nonresident can qualify as guardian. § 475.045.

REVOCATION: A will or any part thereof may be revoked by a subsequent will in writing, or by physical destruction with intent to revoke by the testator, or in his presence, and by his consent and direction. § 474.400.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions in will favoring ex-spouse but the revocation

shall have the same effect as if the ex-spouse died on the date of divorce. § 474.420.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take an elective share equal to one-half of estate if no lineal descendants of testator or one-third if lineal descendants, reduced by the value of all property derived by surviving spouse from the decedent. Election must be made within 10 days after time for contesting will. §§ 474.160, 474.163.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for transfers, inter vivos or testamentary, of intangible property to minors. No bond is required of custodian. §§ 404.010 to 404.100.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 471.010 to 471.080. If the decedent died intestate, any person who fails to survive the decedent by 120 days is deemed to have predeceased him for purposes of determining intestate succession. § 474.015.

CHOICE OF LAW: A written will is valid if executed in compliance with the laws of this state, the law of state where will executed at time of executing or the law of place where at time of execution or time of testator's death, the testator is domiciled, has a place of abode, or is a national. § 474.360.

SPECIAL PROVISION: A will may provide for disposal of personal property by a separate list. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him, must be dated and must describe the items and the devises with reasonable certainty. The writing may (1) be referred to as one to be in existence at the time of the testator's death, (2) be prepared before or after the execution of the Will, (3) be altered by the testator after its preparation, and (4) be a writing which has no significance apart from its effect upon the dispositions made by the will. § 474.333. The following provision is recommended:

I direct my executor or executrix to dispose of items of tangible personal property not otherwise specifically disposed of by this my Will according to a handwritten list signed and dated by me describing the items and devises prepared before or after the execution of my Will. It is my intent to avail myself of the

MISSOURI

maximum rights afforded me under Section 474.333 of the Revised Missouri Statutes.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Collection of assets by affidavit is available when the value of the estate does not exceed \$15,000, less liens and encumbrances. § 473.097. Summary distribution is available when it appears from the inventory and appraisement that the value of the entire estate will not exceed the amount to which the surviving spouse or unmarried children are entitled. § 474.250.

Missouri Self-Proving Clause

THE STATE OF _____
COUNTY OF _____

I, the undersigned, an officer authorized to administer oaths, certify that _____, the testator, and _____, and _____, the witnesses, respectively, whose names are signed to the attached or fore-going instrument, having appeared together before me and having been first duly sworn, each then declared to me that the testator signed and executed the instrument as his last will, and that he had willingly signed or willingly directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen or more years of age, of sound mind, and under no constraint or undue influence.

In witness whereof I have hereunto subscribed my name and affixed my official seal this _____ day of _____, 19 _____.

(Signed)

(SEAL) _____
(Official capacity of officer)

Mo. Ann. Stat. § 474.337 (Vernon).

(Statute specifically includes JAG Officers)

MONTANA

STATUTE: All citations, unless otherwise noted, are to the Montana Code Annotated (MCA). Montana has substantially adopted the 1969 Uniform Probate Code, and has incorporated most of the 1982 UPC amendments (see, Uniform Laws Annotated, Vol. 8, "Estate, Probate & Related Laws"). § 72-1-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: If there is a surviving spouse; (§ 72-2-202).

(1) and no surviving issue, or any such issue is also the issue of the surviving spouse, the spouse receives the entire estate;

(2) and one surviving issue, not the surviving spouse's issue, each receives 1/2 of the estate;

(3) and more than one surviving issue, not the surviving spouse's issue, the spouse receives 1/3 of the estate and the issue receive equal shares (per capita).

If no spouse survives: (§ 72-2-203)

(1) then to the decedent's issue, per stirpes;

(2) if none, then to decedent's surviving parents, per capita;

(3) if none, then to decedent's siblings or their surviving issue, per stirpes;

(4) if none, then to decedent's surviving next-of-kin by their degree (as determined by § 72-11-104 and 105), per capita.

If none of the above applies, the estate escheats to the State (§ 72-2-207).

BASIC WILL REQUIREMENTS:

(1) Age - 18. § 72-2-301.

(2) Testamentary Capacity - sound mind. § 72-2-301.

MONTANA

(3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 72-2-302.

(4) Witnesses - 2. § 72-2-302.

(5) Will may incorporate separate specified documents listing tangible items for specific bequests, if document is either in testator's writing or signed by him and the items and devisees are described with reasonable certainty. § 72-2-311 and 312.

INTERESTED WITNESS: Provisions concerning a witness are void unless there are two additional competent subscribing witnesses to the will. An interested witness is entitled to so much of his or her intestate share, if eligible, not exceeding the devise in the will. § 72-2-305.

NUNCUPATIVE (ORAL) WILL: Prohibited. § 72-2-302.

HOLOGRAPHIC WILL: Valid if the signature and material provisions are in the testator's handwriting. § 72-2-303. (While not specifically required by MUPC, it appears highly advisable that such will also be dated.)

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Personal Representative - Bond normally not required for informal probate. Bond may be required for formal probate unless will expressly provides otherwise or an interested party and the court deem bond advisable. § 72-3-513.

FIDUCIARY RESIDENCY REQUIREMENTS:

No residency restriction on personal representatives. § 72-3-501.

REVOCATION: A will is revoked by a subsequent, properly executed will, either expressly or by inconsistency, or by its physical destruction with testator's intent to revoke. Partial revocation is allowed. § 72-2-321.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions pertaining to ex-spouse unless will expressly provides otherwise. § 72-2-322.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse can take an elective share of one-third of the augmented estate. Election must be made within 6 months after publication of first notice to creditors, §§ 72-2-702 and 707, or 9 months after the date of death, whichever is later.

UNIFORM TRANSFERS TO MINORS ACT: Montana has substantially adopted the UTMA, § 72-26-501 through 803.

UNIFORM SIMULTANEOUS DEATH ACT: Montana repealed its version of the USDA (then Revised Code of Montana, 1947, § 91-423 through 430) in 1974. In its place, Montana has enacted § 72-2-205 and § 72-2-511. Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. Devisee must survive testator by more than 120 hours. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death.

CHOICE OF LAW: Real property within the state is governed by the law of the state, § 70-1-107. The meaning and legal effect of a disposition shall be determined by the law of the place designated by the testator in his instrument unless it is contrary to the public policy of this state. § 72-2-504.

SELF-PROVING PROVISION: For form, see next page. § 72-2-304.

MONTANA

Montana Self-Proving Clause for Use at Time Will is Executed

I, _____, the Testator, sign my name to this instrument this _____ day of _____, 19____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Signature

We, _____, and _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly, and that each of us, in the presence and hearing of the Testator, hereby signs this will as witness to the Testator signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

WITNESSES

ADDRESSES

THE STATE OF _____)
COUNTY OF _____)

Subscribed, sworn to and acknowledged before me by _____,
the Testator, and subscribed and sworn to before me by
_____, _____, and _____, witnesses, on
_____, 19____.

NOTARY PUBLIC
FOR _____ COUNTY _____
THE STATE OF _____
RESIDING AT _____
My Commission Expires: _____

**Montana Self-Proving Clause for Use When Will Has Been Previously
Executed But was not Self-Proven at time of Execution**

THE STATE OF _____
COUNTY OF _____

We, _____, _____, and _____, the
testator and the witnesses, respectively, whose names are signed
to the attached or foregoing instrument, being first duly sworn,
do hereby declare to the undersigned authority that the testator
signed and executed the instrument as his last will and that he had
signed willingly or directed another to sign for him and that he
executed it as his free and voluntary act for the purposes therein
expressed and that each of the witnesses, in the presence and
hearing of the testator, signed the will as witness and that to the
best of his knowledge the testator was at that time 18 or more
years of age, of sound mind, and under no constraint or undue
influence.

Testator

Witness

Witness

MONTANA

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn to before
me by _____, and _____, witnesses, this _____ day
of _____, _____.

(Seal)

(Signed)

(Official capacity of
officer)

NEBRASKA

STATUTE: Neb. Rev. Stat. § 30-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: If there is no surviving issue or parent of the decedent, the surviving spouse inherits the entire intestate estate. If there is no surviving issue, but the decedent is survived by a parent or parents, the first \$50,000, plus one-half of the balance of the intestate estate. If there are surviving issue all of whom are issue of the surviving spouse also, the \$50,000, plus one-half of the balance of the intestate estate. If there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate. § 30-2302.

BASIC WILL REQUIREMENTS:

- (1) Age - 18 or married if under that age. § 30-2326.
- (2) Testamentary Capacity - sound mind. § 30-2326.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 30-2327.
- (4) Witnesses - 2. § 30-2327.

INTERESTED WITNESS: A will or any provision thereof is not invalid because the will is signed by an interested witness. Unless there is at least one disinterested witness to a will, an interested witness to a will is entitled to receive property thereunder only to an amount or extent not exceeding that which is or would be the intestate share of such interested witness if the testator died intestate. § 30-2330.

NUNCUPATIVE WILL: Prohibited.

HOLOGRAPHIC WILL: Valid if the signature, material provisions and date are in the testator's handwriting. In the absence of a date, it is valid if it is the only such instrument or it is not inconsistent with any like instrument. § 30-2328.

MILITARY PROVISIONS: None.

NEBRASKA

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise; all heirs waive the bond requirement, or the executor named is a financial institution. § 30-2446.

Guardian - Bond required; the court may require a guardian to furnish a bond conditioned upon faithful discharge of all duties of trust according to law, with sureties as it shall specify and may alter the amount requirement of any such bond previously furnished. §§ 30-2613(4), 30-2640.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor. § 30-2412.

Guardian - Nonresident qualifies as guardian. § 30-2610.

REVOCATION: A will is revoked by subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke by the testator or by another person in his presence and by his direction. § 30-2332.

EFFECT OF SUBSEQUENT DIVORCE: Divorce, dissolution, or annulment voids all provisions pertaining to ex-spouse unless will provides otherwise. § 30-2333.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse can take an elective share of one-half of the augmented estate. Election must be made within 1 year after issuance of letters testamentary or within 6 months after the first publication to creditors, whichever is earlier. § 30-2313, 2317.

EXEMPT PROPERTY AND ALLOWANCES: Surviving spouse, or in the absence of surviving spouse, minor and dependent children, entitled to homestead allowance of \$7,500.00 which has priority over all claims against estate except for costs and expenses of administration. In addition to homestead allowance, surviving spouse, or in the absence of surviving spouse, children of decedent, is entitled from the estate to value not exceeding \$5,000.00 in excess of any security interest therein in household furniture, automobiles, furnishings, appliances and personal effects. Homestead allowance and exempt property allowance are in addition to share passing by Will unless otherwise provided therein, by elective share, or intestate succession. Section 30-2322; Section 30-2323.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors.

No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 19. §§ 43-2201 to 43-2210.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 30-121 to 30-128. NOTE: For the purpose of intestate succession, an heir must survive the decedent by 120 hours. § 30-2304.

CHOICE OF LAW: A written will is valid if executed in compliance with the laws of Nebraska, or if its execution complies with the law at the time of execution of the place where the will is executed or of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national. § 30-2331.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Collection of personal property by affidavit is available when the value of estate, wherever located, less liens and encumbrances, does not exceed \$10,000. § 30-24,125. Summary administration is available if it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs of administration, reasonable funeral expenses, and reasonable and necessary final medical and hospital expenses. § 30-24,127.

NEBRASKA

Nebraska Self-Proving Clause

THE STATE _____
COUNTY OF _____

I, _____ the testator, sign my name to this instrument this _____ day of _____, 19____ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed and that I am eighteen years of age or older or am not at this time a minor, and am of sound mind and under no constraint or undue influence.

Testator

We, _____ and _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly or willingly directs another to sign for him, and that he executes it as his free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of his knowledge the testator is eighteen years of age or older or is not at this time a minor, and is of sound mind and under no constraint or undue influence.

Witness

Witness

NEBRASKA

THE STATE OF _____
COUNTY OF _____

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn to before
me by _____, and _____, witnesses, this
_____ day of _____, _____.

(SEAL) (Signed) _____

(Official capacity of
officer)

NOTE: The execution of the acknowledgment by the testator and the affidavits of the witnesses as provided for in this section shall be sufficient to satisfy the requirements of the signing of the will by the testator and the witnesses under section 30-2327.

Source:
Neb. Rev. Stat. § 30-2329

NEVADA

STATUTE: Title 12, Nev. Rev. Stat. § 133.010 et seq.

INTESTATE DESCENT & DISTRIBUTION: Upon the death of either husband or wife, an undivided one-half interest in the community property is the property of the surviving spouse. The remaining interests is subject to the testamentary disposition of the decedent, and in the absence, thereof, goes to the surviving spouse and is the only portion subject to administration. Separate property not effectively disposed by will descends as follows: If the decedent is survived by a child or descendant, the estate descends one-half to surviving spouse and one-half to child. If more than one child or descendant, the surviving spouse inherits one-third of estate and the remainder in equal shares to the children. If the decedent leaves no issue or descendants, the surviving spouse inherits one-half and the remainder in equal shares to parents. If the decedent leaves no issue, descendants or parents, the surviving spouse inherits one-half and the descendant's siblings take equal shares. §§ 123.230, 134.040.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 133.020.
- (2) Testamentary Capacity - sound mind. § 133.020.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 133.040.
- (4) Witnesses - 2. § 133.040.

INTERESTED WITNESS: Provisions concerning witness are void unless there are two other subscribing witnesses. § 133.060.

NUNCUPATIVE (ORAL) WILL: A testator may dispose of personal property up to \$1,000 by oral will, provided that the will is made during last illness and witnessed by two persons. § 133.100.

HOLOGRAPHIC WILL: Valid if entirely written, signed and dated by hand of testator. § 133.090.

MILITARY PROVISIONS: No specific provision. See Nuncupative (Oral) Will.

FIDUCIARY BOND REQUIREMENTS:

Executor and Administrator - The requirement of a bond is discretionary with the court. § 142.020.

Guardian - Bond required in most cases unless waived by court in certain excepted situations. § 159.065.

FIDUCIARY RESIDENCY REQUIREMENTS:

Administrator - Nonresident cannot qualify as administrator. § 139.010.

Executor - Nonresident may qualify as executor. § 138.020.

Guardian - Nonresident qualifies as guardian provided he or she associates resident as co-guardian. § 159.059.

REVOCATION: A will is revoked by formal writing, physical destruction with intent to revoke, or subsequent marriage of testator as to the spouse, unless provision has been made for the spouse by marriage contract, or unless the spouse is provided for in the will, or in such a way mentioned therein as to show an intention not to make any provision for the spouse. §§ 133.120, 133.110.

REVIVAL: If after making a will the testator executes a second one, the destruction, canceling, or revocation of the second does not revive the first, unless a contrary intention appears from terms of revocation, or unless after such revocation the first will is duly reexecuted. § 133.130.

UNCLAIMED LEGACIES: Estates escheat to the state when any person dies within the state and leaves no heirs, representatives, devisees or legatees capable of inheriting or holding the estate. § 154.010.

LAPSE: A devise or bequest to a child or other relation of the testator, when the devisee or legatee dies before the testator, leaving lineal descendants, does not lapse, but the descendants take the estate in the same manner as the devisee or legatee would have taken had he survived, in the absence of a contrary provision in the will. § 133.200.

CHILDREN: Where the will omits to provide for any child of the testator or for the issue of any deceased child, it shall be presumed that the omission was intentional. Should the court find that the omission was unintentional, such child or issue of any deceased child shall have the same share in the estate of the testator as if he or she had died intestate. § 133.170. Children born after the making of a will shall receive an intestate share unless a contrary intent is expressed in the will. § 133.160.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all beneficial or equitable property interest provisions concerning ex-spouse except the naming of the ex-spouse as executor or executrix. § 133.115.

SPOUSE'S RIGHT OF ELECTION: No express right of election; however, surviving spouse is entitled to one-half of community property. Husband and wife may provide non-community property to each other by premarital agreement. §134.005.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for transfers to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 167.010 to 167.110.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 135.010 to 135.090.

CHOICE OF LAW: A written will signed by testator is valid when executed in accordance with the law of this state, the state where executed or that of testator's domicile. § 133.080.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Summary administration is available for both testate and intestate estates when the gross value of the estate is \$100,000 or less. § 145.010 et seq.

NEVADA

STATE OF _____

COUNTY OF _____

(Date) _____

Then and there personally appeared the within named _____, and _____, who, being duly sworn, depose and say: That they witnessed the execution of the within will of the within-named testator, _____; that the said testator subscribed the will and declared the same to be his last will and testament in their presence; that they thereafter subscribed the same as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory, and that they make this affidavit at the request of the testator.

Subscribed and sworn to before me
this _____ day of _____, 19____
_____(Seal)
Notary Public

Source:
Nev. Rev. Stat. § 133.050.

NEW HAMPSHIRE

STATUTE: N.H. Rev. Stat. Ann. § 551:1 et seq.

INTESTATE DESCENT & DISTRIBUTION: If the decedent leaves issue of the marriage, the surviving spouse takes \$50,000 plus one-half of the remaining estate. If the decedent leaves issue not the issue of the survivor, the surviving spouse inherits one-half of the estate. If there is no surviving issue but the decedent is survived by a parent, the survivor receives \$50,000 plus one-half of the estate. The surviving spouse is entitled to the entire estate if no issue or parent survives the decedent. § 561:1.

BASIC WILL REQUIREMENTS:

- (1) Age - 18 or married persons under that age. § 551:1.
- (2) Testamentary Capacity - sane mind. § 551:1.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 551:2.
- (4) Witnesses - for wills executed on or before 31 Dec 83 three witnesses are required, and for wills executed on or after 1 Jan 84 two witnesses are required § 551:2.

INTERESTED WITNESS: Provisions concerning a subscribing witness or the spouse of such a witness are void unless there are two other subscribing witnesses. § 551:3.

NUNCUPATIVE (ORAL) WILL: Valid if declared in the presence of three witnesses, reduced to writing within 6 days, and probated within 6 months. § 551:16.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: An active duty servicemember may dispose of personalty by an oral will. § 551:15.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless the value of the estate is under \$25,000, in which case it is within the court's discretion to require it. Will provision can waive bond requirement except for debts and taxes. §§ 553:13, 553:15.

Guardian - Bond required unless ward's estate is under \$2,500, or for guardian of the person only.
§ 464-A:21.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident does not qualify as executor unless judge gives his or her approval. § 553:5.

Guardian - Nonresident qualifies as guardian.
§ 464-A:10.

REVOCATION: A will is revoked by subsequent will, formal writing, or physical destruction with intent to revoke. § 551:13.

EFFECT OF SUBSEQUENT DIVORCE: Divorce does not void provisions of will executed during marriage. § 551:14.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse is entitled to take an elective share equal to one-third of the estate if decedent leaves issue. If decedent leaves no issue but is survived by a parent or sibling, surviving spouse may take \$10,000 of personalty and \$10,000 of realty, plus one-half of the remainder. If the decedent leaves no issue, parent, or sibling, surviving spouse takes \$10,000, plus \$2,000 for each full year of marriage to the decedent plus one-half of the remainder. Election must be made within 6 months after appointment of executor. § 560:17.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for transfers to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 463-A:1 to 463-A:10.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 563:1 to 563:9.

CHOICE OF LAW: A will valid in the state of its execution may be proved and allowed in New Hampshire. § 551:5.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Collection of assets by affidavit is available when the estate consists of personal property not exceeding \$500 in value. Under this scheme the surviving spouse, lineal descendant or sibling acts as voluntary administrator. Collection of assets by affidavit is also available when personal property in an estate is more than \$500, but not more than \$5,000. § 553:31 and § 552:31-a.

NEW HAMPSHIRE

NEW HAMPSHIRE

New Hampshire Self-Proving Clause

THE STATE OF _____
COUNTY OF _____

We, _____, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, at the request of the testator, in his presence, and in the presence of each other, signed the will as witness and that to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Witness

Subscribed, sworn to and acknowledged before me by
before me by _____, the testator and subscribed and sworn to
_____, witnesses, this _____ and
day of _____,
_____.

(SEAL)

(Signed)

(Official capacity of
officer)

Source:

N.H. Rev. Stat. Ann. § 551:2-a; § 552:6-a.

NEW JERSEY

STATUTE: N.J. Stat. Ann. § 3B:3-1 et seq. (West).

INTESTATE DESCENT & DISTRIBUTION: If the decedent is survived by no issue or parent, the surviving spouse inherits the entire estate. If the decedent is survived by no issue but a parent, the surviving spouse inherits the first \$50,000, plus one-half the balance of estate. If the decedent is survived by issue all of whom are issue of surviving spouse, the surviving spouse inherits \$50,000 plus one-half the balance of estate. If the decedent is survived by issue one or more of whom are not issue of surviving spouse, the surviving spouse inherits one-half of estate. § 3B:5-3.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 3B:3-1.
- (2) Testamentary Capacity - sound mind. § 3B:3-1.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 3B:3-2.
- (4) Witnesses - 2. § 3B:3-2.

INTERESTED WITNESS: A will or any provision thereof is not invalid because it is signed by an interested witness. § 3B:3-8.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Valid if all material provisions and signature are in the handwriting of testator. § 3B:3-3.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond not required unless the executor falls into one of the enumerated exceptions. One exception is for the nonresident executor, but the testator, in the will, may waive bonding requirements for a nonresident executor. § 3B:15-1.

Guardian - Bond required but may be waived in the will. §§ 3B:12-33, 3B:15-1.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor, but he must execute a power of attorney authorizing service of process on the Court Surrogate as agent for receipt of process. § 3B:14-47.

Guardian - Nonresident qualifies as guardian. § 3B:12-13.

REVOCATION: A will or part thereof is revoked by subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke. § 3B:3-13.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions pertaining to the ex-spouse. § 3B:3-14.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take an elective share equal to one-third of the augmented estate. Election must be made within 6 months of probate. §§ 3B:8-1, 3B:8-12.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. §§ 46:38-A-1 to 46:38-A-57.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 3B:6-2 to 3B:6-6. NOTE: A devisee who does not survive testator by 120 hours is treated as if he predeceased the testator, unless will expressly provides otherwise. To the extent that this section is inconsistent with the Simultaneous Death Act, this section applies. § 3B:3-32.

SMALL ESTATE ADMINISTRATION: Collection of assets by affidavit is available when the value of the intestate estate does not exceed \$10,000 and there is a surviving spouse. § 3B:10-3. Collection of assets by affidavit is also available when the value of the intestate estate does not exceed \$5,000, there is no surviving spouse, and there is at least one heir. § 3B:10-4.

CHOICE OF LAW: A written will is valid if executed in accordance with law of this state, the law of place of execution, or the law of place where at time of execution or at time of death the testator was domiciled. § 3B:3-9.

SELF-PROVING PROVISION: Yes. For form, see next page.

New Jersey Self-Proving Clause

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19____, and being duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, the witnesses, sign our names to this instrument, and, being duly sworn, do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

The State of _____
County of _____

Subscribed, sworn to and acknowledged before me by
_____, the testator and subscribed and sworn to before
me by _____, and _____, witnesses, this
_____ day of _____.

(Signed)

(Official capacity of
officer)

Source:
N.J. Stat. Ann. § 3B:3-4 (West).

NEW MEXICO

STATUTE: N.M. Statutes Ann. § 45-1-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: If no issue survive the decedent, the surviving spouse inherits all property. If issue survive, then the surviving spouse receives all of the community property and one-fourth of all property owned separately by the decedent. § 45-2-102.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 45-2-501.
- (2) Testamentary capacity - sound mind. § 45-2-501.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 45-2-502.
- (4) Witnesses - 2 or more. § 45-2-505.

INTERESTED WITNESS: A will or any provision thereof is not invalid because it is signed by an interested witness. § 45-2-505.

NUNCUPATIVE (ORAL) WILL: Prohibited. § 45-2-502(B).

HOLOGRAPHIC WILL: Does not satisfy the requirements of § 45-2-502. However, if a holographic will is valid in the jurisdiction in which it is executed, it is valid to pass New Mexican property.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond not required for informal probate proceedings unless required by will, upon the appointment of a special administrator, or requested by a party with an interest exceeding \$7,500. Bond may be required for formal probate unless will provides otherwise. §§ 45-3-603, 45-3-605.

Guardian -- The court may require bond sua sponte or upon request by the Veterans Administration. § 45-5-411.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor. § 45-3-203.

NEW MEXICO

Guardian - Nonresident qualifies as guardian. §§ 45-5-206, 45-5-311.

REVOCATION: A will is revoked by subsequent will, formal writing, or physical destruction with intent to revoke. § 45-2-507.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids provisions pertaining to ex-spouse unless will provides otherwise. § 45-2-508.

SPOUSE'S RIGHT OF ELECTION: No express right of election; however, a surviving spouse is entitled to one-half of the community property based on community property laws. § 45-2-804.

FAMILY ALLOWANCE: The surviving spouse receives a family allowance of \$10,000 in addition to property passing by intestate succession or by will, unless the will provides otherwise. If no spouse survives, then \$10,000 is divided among the minor or dependent children. § 45-2-401.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 46-7-11 to 46-7-34.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator by 120 hours, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. § 45-2-601. NOTE: For the purposes of intestate succession, an heir must survive the decedent by 120 hours. § 45-2-104.

CHOICE OF LAW: A written will is valid if executed in compliance with the laws of New Mexico, or if its execution complies with the law of the place of execution, or the law of the place of the testator's domicile at the time of execution or death. § 45-2-506.

LIVING WILL: Will may provide that, if certified by two physicians as suffering a terminal illness or an irreversible coma, maintenance medical treatment shall not be utilized for the prolongation of life. § 24-7-3.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Collection of personal property by

affidavit is available when the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$5,000 § 45-3-1201. Summary administration is available when it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed the family allowance, personal property allowance, costs and expenses of administration, reasonable and necessary medical and hospital expenses of the last illness of the decedent and reasonable funeral expenses. Under summary administration the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled. § 45-3-1204.

NEW MEXICO

New Mexico Self-Proving Clause

STATE OF NEW MEXICO

COUNTY OF _____

We, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he signed willingly, or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses saw the testator sign or another sign for him at his direction and, in the presence of the testator and in the presence of each other, signed the will as witness and that to the best of his knowledge the testator had reached the age of majority, was of sound mind and was under no constraint or undue influence.

Testator

Witness

Witness

NEW MEXICO

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn to before
me by _____, and _____, witnesses, this
_____ day of _____, _____.

(Seal)

(Signed)

(Official capacity of
officer)

Source:
N.M. Stat. Ann. § 45-2-504.

NEW YORK

STATUTE: N.Y. Est., Powers & Trusts Law § 1-1.1 et seq. (McKinney).

INTESTATE DESCENT & DISTRIBUTION: If decedent is survived by a spouse and issue, surviving spouse takes personal property not exceeding \$4,000 and one-third of the remaining personal property, the balance to the children. If decedent is survived by a spouse and only one child, or only the issue of one deceased child, surviving spouse takes personal property not exceeding \$4,000 and one-half the remaining personal property, the balance to the child or his issue. If decedent is survived by a spouse and both parents, and no issue, surviving spouse takes \$25,000 and one-half the excess. E.P.T.L. § 4-1.1. Under certain circumstances, a spouse may be disqualified as a distributee. For example, if a husband failed or refused to support his wife, on her death he may be disqualified. Or, a surviving spouse against whom a final decree of separation has been rendered is disqualified. See § 5-1.2.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 3-1.1.
- (2) Testamentary Capacity - sound mind and memory. § 3-1.1.
- (3) Signature - testator's signature or signed by someone at end of will under testator's direction and in his presence. § 3-2.1.
- (4) Witnesses - 2. § 3-2.1.

INTERESTED WITNESS: Provisions concerning a witness are void unless two disinterested witnesses attest will, except that an interested witness may always take up to the amount he or she would have received through intestacy. § 3-3.2.

NUNCUPATIVE (ORAL) WILL: Prohibited except for military personnel or persons serving with or accompanying them. See Military Provisions below.

NEW YORK

HOLOGRAPHIC WILL: Prohibited except for military personnel or persons serving with or accompanying them. See Military Provisions below.

MILITARY PROVISIONS: A testator may dispose of property by oral will, provided he is (1) a member of the armed forces while in actual military service during declared or undeclared war or other armed conflict in which members of the armed forces are engaged; (2) or is a person serving with or accompanying armed forces in these circumstances; or (3) is a mariner at sea. A will executed during armed conflict or while at sea expires after 1 and 3 years respectively. A handwritten will is valid if the testator is a member of the Armed Forces or a mariner. § 3-2.2.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond not required unless required by will. Surr. Ct. Proc. Act § 710.

Guardian - Bond not required, unless required by will. Surr. Ct. Proc. Act § 710.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident may qualify as fiduciary. Surr. Ct. Proc. Act § 707.

Guardian - Same requirement as for executor above. Surr. Ct. Proc. Act § 707.

REVOCATION: A will is revoked by subsequent will, or formal writing, or by physical destruction with intent to revoke. § 3-4.1.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions concerning the ex-spouse unless the will expressly provides otherwise. § 5-1.4.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take elective share equal to one-third of estate if decedent survived by issue, and in all other cases limited to one-half of estate. Election must be made within 6 months from date of issuance of letters testamentary. § 5-1.1.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 7-4.1 to 7-4.12.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. § 2-1.6.

CHOICE OF LAW: The disposition of real property is governed by the law of the place where located. The disposition of personal property is governed by the domicile of the testator. § 3-5.1.

SELF-PROVING PROVISION: Yes. If no one appears to contest the probate, the court may admit the will to probate on the evidence of one of the subscribing witnesses only, if the evidence shows that the will was executed in all particulars as required by law, which evidence may be received by an affidavit to which there is attached a photographic copy of the will, or by an affidavit in the original will which may include or incorporate the attestation clause. For form, see next page.

SMALL ESTATE ADMINISTRATION: Gross estates of personal property not exceeding \$10,000, exclusive of property to be set off, may be settled without court administration. N.Y. SURR. CT. PROC. ACT § 1301. A voluntary administrator collects assets through use of an affidavit, pays debts and then distributes the balance to those entitled under the intestate succession laws.

NEW YORK

STATE OF NEW YORK

SS:

COUNTY OF _____

Each of the undersigned, individually and severally, being duly sworn, deposes and says:

The within will was subscribed in our presence and sight at the end thereof by _____, the within named testator, on the _____ day of _____, 198____, at _____.

Said testator at the time of making such subscription declared the instrument so subscribed to be his last will.

Each of the undersigned thereupon signed his name as a witness at the end of said will, at the request of said testator and in his presence and sight and in the presence and sight of each other.

Said testator was, at the time of so executing said will, over the age of eighteen years, and, in the respective opinions of the undersigned, of sound mind, memory and understanding and not under any restraint or in any respect incompetent to make a will.

Said testator, in the respective opinions of the undersigned, could read, write and converse in the English language and was suffering from no defect of sight, hearing or speech, or from any other physical or mental impairment which would affect his capacity to make a valid will. The will was executed as a single, original instrument and was not executed in counterparts.

Each of the undersigned was acquainted with said testator at such time, and makes this affidavit at his request.

The within will was shown to the undersigned at the time this affidavit was made, and was examined by each of them as to the signatures of said testator and of the undersigned.

The foregoing instrument was executed by said testator and witnessed by each of the undersigned affiants under the supervision of _____,
an attorney-at-law.

NEW YORK

Severally sworn to before me this

____ day of _____, 198____

Notary Public

NORTH CAROLINA

STATUTE: N.C. Gen. Stat. § 31-1 et seq. (Wills); § 28A-1 et seq. (Intestate Succession); § 33-1 et seq. (Guardian and Ward); 30-1 et seq. (Surviving Spouse).

INTESTATE DESCENT & DISTRIBUTION:

(1) For real property:

(a) If decedent is survived by one child or lineal descendant thereof, surviving spouse receives one-half undivided interest;

(b) If decedent is survived by two or more children, or lineal descendants thereof, surviving spouse receives one-third undivided interest;

(c) If decedent is survived by one or more parents but not children or lineal descendants thereof, surviving spouse receives one-half of real property.

(d) If decedent is not survived by a child, lineal descendant thereof, or a parent, surviving spouse receives all real property. § 29-14.

(2) For personal property:

(a) If the same as (a) above and net personal property does not exceed \$15,000, surviving spouse receives all personal property; if above \$15,000, he or she receives \$15,000 plus one-half balance;

(b) If same as (b) above and net personal property does not exceed \$15,000, surviving spouse receives all personal property; if above \$15,000, he or she receives \$15,000 plus one-third balance;

(c) If same as (c) above and net personal property does not exceed \$15,000, surviving spouse receives all personal property; if above \$15,000, he or she receives \$15,000 plus one-half balance; and

(d) If same as (d) above, he or she receives all personal property. § 29-14.

BASIC WILL REQUIREMENTS:

(1) Age - 18. § 31-1.

(2) Testamentary Capacity - sound mind. § 31-1.

(3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 31-3.3.

(4) Witnesses - 2. § 31-3.3.

NORTH CAROLINA

INTERESTED WITNESS: Gifts to interested witness or spouse of such witness are void unless will is subscribed by two other disinterested witnesses; will remains valid in all other respects, however. § 31-10.

NUNCUPATIVE (ORAL) WILL: Testator may dispose of property by oral will if--

- (1) It is made by person in his last sickness or in imminent peril of death;
- (2) Who does not survive such sickness or death;
- (3) Who declared his will before two competent witnesses simultaneously present;
- (4) And said witnesses were specially requested by him to bear witness thereto. § 31-3.5.
- (5) No oral will may be probated later than six months from the time it was made unless it was reduced to writing within 10 days after it was made.

HOLOGRAPHIC WILL: A holographic will may only dispose of personal property. In Re Garland's Will, 160 N.C. 555, 76 S.E. 486 (1912). It is valid if written entirely in hand of testator and signed. Must also be found among valuable papers or in possession and safekeeping of person authorized by testator. No witnesses are required. §§ 31-3.4, 31-18.2, 31-18.3.

MILITARY PROVISIONS: A will executed by a person while in the armed forces or merchant marines shall be admitted to probate even in absence of subscribing witnesses, provided three witnesses testify that the signature is that of testator. § 31-18.4.

FIDUCIARY BOND REQUIREMENTS:

Executor - Generally, bond required unless waived by express terms of will. Not needed for--

- (1) Personal representative when he receives all property of decedent;
- (2) Resident executor unless required by will;

NORTH CAROLINA

(3) Resident personal representative when all heirs are over 18 and sign waiver;

(4) Banks as executors, §§ 28A-8-1, 33-12.

Guardian - No guardian shall be appointed to receive property for a minor or incompetent without posting bond, although the provision may be waived by express terms of will. §§ 35-A-1230 and 35A-1225(a).

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies if resident appointed to accept service of process. § 28A-4.2.

Guardian - Nonresident qualifies if resident appointed to accept service of process § 35A-1213.

REVOCATION: A will is revoked by subsequent will, by subsequent revocatory document executed with will's formalities, or by physical destruction/cancellation with intent to revoke. Will is not revoked by subsequent marriage. § 31-5.1.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids provisions in favor of ex-spouse, including appointment as executor/ix, unless will provides otherwise. § 31-5.4.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take elective share equal to intestate share. This is limited to one-half of the estate when deceased spouse was not survived by a child, children, lineal descendants of a deceased child or children, or by a parent. If surviving spouse is a second or successive spouse of deceased, he is limited to one-half of this intestate share (in effect, one-fourth of the estate) if the deceased was survived by lineal descendants by a former marriage and there are no surviving lineal descendants of the decedent and widow. Election must be made within 6 months after issuance of letters testamentary. § 30-1, 2, 3.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. Statute permits inter vivos and testamentary disposition of property.
§ 33A-1 et seq.

NORTH CAROLINA

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property is disposed of as if testator had survived, but provision in will may dispose of property otherwise. §§ 28A-24-1 to 28A-24-7.

CHOICE OF LAW: A will executed outside state is subject to examination by court to determine validity of its execution, but a will is considered valid if it meets the applicable North Carolina statutory provisions either at time of execution or at time of testator's death. §§ 31-23, 31-46.

SELF-PROVING PROVISION: Yes. For form, see next two pages.

1. Self-Proving Clause I is to be used for wills previously executed and attested; same witnesses must execute this Self-Proving Clause, and it is attached to original will.

2. Self-Proving Clause II is to be used for all other wills that are to be simultaneously executed, attested and self-proved. The text of this clause is added on the will after the last dispositive clause of the text of the will.

North Carolina Self-Proving Clause I

STATE OF NORTH CAROLINA
COUNTY/CITY OF _____

Before me, the undersigned authority, on this day personally appeared _____, and _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn. The testator, declared to me and to the witnesses in my presence: that said instrument is his last will; that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; or, that the testator signified that the instrument was his instrument by acknowledging to them his signature previously affixed thereto.

The said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will in the presence of said witnesses who, in his presence and at his request, subscribed their names thereto as attesting witnesses and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

Testator

Witness

Witness

Witness

Subscribed, sworn and acknowledged before me by
_____, the testator, subscribed and sworn
before me by _____, _____, and _____,
witnesses, this _____ day of _____, A.D.,
_____.

(Seal)

(Signed) _____

(Official capacity of officer) _____

Source:

N.C. Gen. Stat. § 31-11.6.

NORTH CAROLINA

North Carolina Self-Proving Clause II

I, _____, the testator, sign my name to this instrument this _____ day of _____ 19____ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

THE STATE OF NORTH CAROLINA
COUNTY OF _____

Subscribed, sworn to and acknowledged before me by _____ the testator and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____.

(SEAL)

(Signed) _____

(Official Capacity of Officer) _____

Source:
N.C. Gen. Stat. § 31-11.6.

NORTH DAKOTA

STATUTE: N.D. Cent. Code § 30.1-08-01 et seq.

INTESTATE DESCENT & DISTRIBUTION: If decedent has no surviving issue or parent, the surviving spouse inherits entire estate. If decedent has no surviving issue but is survived by parent(s), the surviving spouse inherits the first \$50,000, plus one-half balance of estate. If decedent is survived by issue all of whom are issue of surviving spouse, the surviving spouse inherits the first \$50,000, plus one-half balance of estate. If decedent is survived by issue, one or more of whom are not issue of the surviving spouse, the surviving spouse inherits one-half of the estate. § 30.1-04-02. If decedent has no surviving spouse, inheritance is provided for by lineal descendants of decedent, parents and their descendants, and grandparents and collateral relatives descended from grandparents. § 30.1-04-03.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 30.1-08-01.
- (2) Testamentary Capacity - sound mind. § 30.1-08-01.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 30.1-08-02.
- (4) Witnesses - 2. § 30.1-08-02.

INTERESTED WITNESS: A will or any provision thereof is not invalid because the will is signed by interested witness. § 30.1-08-05.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Valid if all material provisions and signature are in handwriting of testator. § 30.1-08-03.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Personal Representative - No bond required in informal proceeding unless will expressly requires one or bond is demanded by an interested person. § 30.1-17-03.

Conservator - Conservator and trustee under an obligation to file bond unless waived by express terms of will or trust respectively. § 30.1-29-11.

FIDUCIARY RESIDENCY REQUIREMENTS:

Personal Representative - Nonresident qualifies as personal representative. § 30.1-13-03.

Guardian - Nonresident qualifies as guardian. § 30.1-27-06.

REVOCATION: A will is revoked by formal writing, either expressly or by inconsistency, or by physical destruction with intent to revoke. § 30.1-08-07.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions pertaining to the ex-spouse, unless will provides otherwise. § 30.1-08-08.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take elective share equal to one-third of augmented estate. Election must be made within 9 months after date of death or 6 months after probate. §§ 30.1-05-01 and 30.1-05-05.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian liable for losses of property in absence of bad faith or gross negligence. §§ 47-24.1-01 to 47-24.1-22.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 31-12-01 to 31-12-06.

NORTH DAKOTA

CHOICE OF LAW: A written will is valid if executed in compliance with law of this state, or the law at time of execution of place where will is executed, or the law of place where at time of execution or at time of death the testator is domiciled. § 30.1-08-06. Real property is governed by the law of North Dakota. § 47-04-01. Personal property is governed by the law of the testator's domicile. § 47-07-01.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Collection of personal property by affidavit is available when the personal property of an intestate decedent does not exceed \$10,000, less liens and encumbrances. § 28A-25-1.

Specific provision for Ante-Mortem probate by Declaratory Judgment of Will requirements. § 30.1-08.1-01.

NORTH DAKOTA

North Dakota Self-Proving Clause

THE STATE OF _____
COUNTY OF _____

—
I, _____, the testator, sign my name
to this instrument this _____ day of
_____, and, being first
sworn, declare to the undersigned authority that I sign
and execute this instrument as my last will, that I sign
it willingly or willingly direct another to sign for me,
that I execute it as my free and voluntary act for the
purposes therein expressed, and that I am eighteen years
of age or older, of sound mind, and under no constraint
or undue influence.

Testator

We, _____, and _____, the
witnesses, sign our names to this instrument, and being
first sworn, declare to the undersigned authority that
the testator signed and executed this instrument as his
last will, that he signed it willingly or willingly
directed another to sign for him, that each of us, in
the presence and hearing of the testator, signs this will
as witness to the testator's signing, and that to the
best of our knowledge the testator is eighteen years of
age or older, of sound mind, and under no constraint or
undue influence.

Witness

Witness

NORTH DAKOTA

Subscribed, sworn to, and acknowledged before me by
_____, the testator, and subscribed and
sworn to before me by _____, and
_____ witnesses this
_____ day of _____.

(Seal)

(Signed)

(Official capacity of
officer)

N.D. Cent. Code § 30.1-08-04.

OHIO

STATUTE: Ohio Rev. Code Ann. § 2105 et seq. (Page).

INTESTATE DESCENT & DISTRIBUTION: The surviving spouse has a dower interest only in realty which was conveyed during the marriage without the consent of the spouse. If the decedent is survived by one child or the child's lineal descendant, the surviving spouse inherits the first \$60,000 (\$20,000 if the spouse is not the child's natural or adoptive parent) plus one-half of the remaining estate. If the decedent is survived by more than one child or the child's lineal descendants, the surviving spouse is entitled to the same lump sum plus one-third of the remainder. §§ 2103.02, 2105.06 (Page).

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 2107.02 (Page).
- (2) Testamentary Capacity - sound mind and memory, and not under restraint. § 2107.02 (Page).
- (3) Signature - testator's signature at end of will or signed by someone at testator's direction and in his presence. § 2107.03 (Page).
- (4) Witnesses - 2. § 2107.03 (Page).

INTERESTED WITNESS: Provisions concerning a witness are void. However, the witness is entitled to an intestate share, if entitled, not exceeding the devise in the will. § 2107.15 (Page).

NUNCUPATIVE (ORAL) WILL: Valid as to personalty only if made during the testator's last sickness and reduced to writing by two witnesses within 10 days. § 2107.60 (Page).

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: No specific provision. See Nuncupative (Oral) Will.

OHIO

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will expressly provides otherwise. § 2109.04 (Page).

Guardian - Bond required unless will provides otherwise. § 2109.04 (Page).

Note: An individual cannot be executor and guardian unless the will expressly appoints the person as both.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor or trustee - Nonresident qualifies if named in the will and is related to the maker of the will or resides in a state which authorizes the appointment of an executor not related to the maker. ORC 2109.21(B).

Guardian - Nonresident does not qualify as guardian unless parent of minor, under will, or minor over age 14 selected him. ORC 2109.21(C).

REVOCATION: A will is revoked by subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke. § 2107.33(A) (Page).

EFFECT OF SUBSEQUENT DIVORCE: Divorce or separation agreement voids all provisions pertaining to ex-spouse unless will expressly provides otherwise. § 2107.33(C) (Page).

SPOUSE'S RIGHT OF ELECTION: A surviving spouse can elect to take an intestate share not to exceed one-half of the net estate. If the decedent is survived by two or more children or their lineal issue, the surviving spouse's elected share cannot exceed one-third of the net estate. The election may be made any time after probate of will but must be made within 1 month after service of citation to elect. ORC § 2107.39(C)(E).

OHIO TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 1339.31 to 1339.39 (Page).

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived

the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 2105.21 (Page).

CHOICE OF LAW: A will is valid if executed in accordance with the law of Ohio.

SELF-PROVING PROVISION: Although Ohio does not have a statutory self-proving provision, its probate courts shall admit a will if it appears from the face of the instrument that it was validly executed. Testimony of the witnesses is not required in these cases. § 2107.18 (Page).

SMALL ESTATE ADMINISTRATION: An interested party may apply for release of an estate from administration when the value of estate assets does not exceed \$25,000. § 2113.03.

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OKLAHOMA

STATUTE: Okla. Stat. Ann. tit. 84, § 1-308 (West).

INTESTATE DESCENT & DISTRIBUTION: As of JULY 1, 1985, the following tables of descent and distribution apply, unless otherwise limited by marriage contract:

1. If no surviving issue, parent, brother or sister of decedent, the surviving spouse takes the entire estate.
2. If no surviving issue but a surviving parent, brother or sister, the surviving spouse takes all property acquired by the joint industry of decedent and surviving spouse during coverture, plus an undivided one-third interest in the remaining estate.
3. If there are surviving issue, all of whom are issue of the surviving spouse, the surviving spouse takes an undivided one-half interest in all property of the estate, whether acquired by the joint industry of the decedent and surviving spouse during coverture.
4. If there are surviving issue, one or more of whom are not the issue of the surviving spouse, the surviving spouse takes an undivided one-half interest in the property acquired by the decedent and the surviving spouse by their joint industry during coverture, and an undivided equal part in the remaining estate with each of the living children of the decedent and the lawful issue of any deceased child by right of representation. § 84, § 213. (Eff. July 1985).

BASIC WILL REQUIREMENTS:

- (1) Age - 18. Tit. 84, § 41.
- (2) Testamentary Capacity - sound mind. Tit. 84, § 41.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence at end of will. Tit. 84, § 55.
- (4) Witnesses - 2. Tit. 84, § 55.

INTERESTED WITNESS: Provisions concerning a witness are void unless witness entitled to share by intestacy.

OKLAHOMA

Witness only entitled to amount up to intestate share unless will witnessed by two disinterested witnesses. Tit. 84, § 143.

NUNCUPATIVE (ORAL) WILL: Prohibited, except for military personnel. See Military Provisions below.

HOLOGRAPHIC WILL: Valid if entirely written, signed, and dated in handwriting of testator. It may be made in or out of the state and need not be witnessed. Tit. 84, § 54; tit. 58, § 31.

MILITARY PROVISIONS: A testator in actual military service who is in immediate peril may dispose of property up to \$1,000 by oral will, provided that will is witnessed by two persons. Tit. 84, § 46.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by express terms of will. Tit. 58, §§ 171, 178.

Guardian - Bond required, unless the guardian is a parent, spouse, grandparent, child or grandchild of the ward. Tit. 30, § 4-201.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor, provided that a resident agent is appointed. Tit. 58, 162.

Guardian - Nonresident does not qualify as guardian unless the nonresident is spouse, child, parent, brother, sister, aunt, uncle, niece or nephew of the minor or incompetent, or the nonresident is named in the will (or otherwise in writing) of the parent or next of kin of the minor or incompetent. Tit. 30, § 104.

REVOCATION: A will is revoked by formal writing or physical destruction with intent to revoke. A prior will is not revoked by a subsequent will unless the latter contains an express revocation or contains provisions wholly inconsistent with the former. Otherwise, the prior will remains in effect insofar as consistent with the subsequent will. Tit. 84, §§ 101, 105.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions pertaining to ex-spouse, unless decree of divorce or annulment is vacated or testator remarries former spouse. Tit. 84, § 114.

SPOUSE'S RIGHT OF ELECTION: A will is subservient to any antenuptial contract in writing. In addition a surviving spouse may elect to take a one-half undivided interest in all property acquired by the joint industry of the husband and wife during coverture. The election must be in writing and filed in the district court where the estate is being probated on or before the final date of hearing of the petition for final distribution of the estate. These provisions took effect July 1, 1985. Tit. 84, § 44.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for transfers to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith, intentional wrongdoing, or gross negligence, or failure to maintain a prudent man standard in investing the custodial property. Tit. 58, §§ 1201 to 1226.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. Tit. 58, §§ 1001 to 1008.

CHOICE OF LAW: A will is valid if executed either according to the laws of this state, the state in which it was made, or the state in which testator at the time was domiciled. Tit. 84, § 71. Real property within Oklahoma is governed by the laws of that state. Personalty is governed by the laws of the testator's domicile. Tit. 84, § 20, Tit. 60, § 21.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Intestate and Testate estates not exceeding \$60,000 may be settled by summary administration. Tit. 58, § 241.

OKLAHOMA

Oklahoma Self-Proving Clause

The State of Oklahoma

County of _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument, in their respective capacities, and all of said persons being by me first duly sworn, said _____, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, or a codicil to his last will and testament, and that he had willingly made and executed it as his free and voluntary act and deed for the purposes therein expressed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, or codicil to his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that he did sign the same as witness in the presence of the said testator and at his request and that said testator was at that time eighteen (18) years of age or over and was of sound mind.

Testator

Witness

Witness

OKLAHOMA

Subscribed and acknowledged before me by the said _____, testator, and subscribed and sworn before me by the said _____, and _____, witnesses, this _____ day of _____, A.D., _____.

(Seal)

Signed _____

(Official capacity of
officer)

Okla. Stat. Ann. tit. 84, § 55.

OREGON

STATUTE: Or. Rev. Stat. § 112.015 et seq.

INTESTATE DESCENT & DISTRIBUTION: If the decedent leaves a surviving spouse and issue, the surviving spouse shall have one-half interest in net estate. If the decedent leaves a surviving spouse and no issue, the surviving spouse inherits entire net estate. §§ 112.025, 112.035.

NOTE: Any person who fails to survive decedent by 120 hours is considered to have predeceased the decedent for purpose of intestate succession and taking under will unless will provides otherwise. § 112.085.

BASIC WILL REQUIREMENTS:

- (1) Age - 18 or lawfully married person. § 112.225.
- (2) Testamentary Capacity - sound mind. § 112.225.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 112.235(1).
- (4) Witnesses - 2. § 112.235(2).

INTERESTED WITNESS: A will attested by an interested witness is not thereby invalidated. § 112.245.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by terms of will. § 113.105.

Guardian - Bond not required for guardianship of person, but required for conservator of property. §§ 126.233, 126.237.

OREGON

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor. § 113.095.

Guardian - Nonresident qualifies as guardian. § 126.045.

REVOCATION: A will is revoked by formal writing or physical destruction with intent to revoke. Will also revoked by subsequent marriage unless will expressly provides otherwise or husband and wife enter written contract securing devise or bequest against revocation. §§ 112.285, 112.305.

EFFECT OF SUBSEQUENT DIVORCE: Unless the will evidences a different intent, divorce voids all provisions pertaining to the ex-spouse. § 112.315.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take elective share equal to one-quarter of net estate. Net estate may be reduced by certain property given under will. § 114.105. Election must be made within 90 days after submission of will to probate.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for transfers to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. §§ 126.805 to 126.886.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 112.575 to 112.645.

CHOICE OF LAW: A written will signed by or at the direction of testator is valid if executed in compliance with the law of this state, the state of testator's domicile at time of execution or death, or the place of execution at the time of execution. § 112.255.

SELF-PROVING PROVISION: No.

OREGON

SMALL ESTATE ADMINISTRATION: Collection of real or personal property by affidavit is available when the value of the personal property does not exceed \$15,000, or the value of the real property does not exceed \$35,000, or a combination of real and personal property where value of the real property does not exceed \$35,000 and the value of the personal property does not exceed \$15,000. Procedure available for both testate and intestate estates. § 114.515.

PENNSYLVANIA

PENNSYLVANIA

STATUTE: Pa. Stat. Ann. tit. 20, § 101 et seq. (Purdon).

INTESTATE DESCENT & DISTRIBUTION: If there is no surviving issue or parent of the decedent, the entire intestate estate descends to surviving spouse. If there is no surviving issue of the decedent but he or she is survived by a parent or parents, the first \$30,000 plus one-half of the balance of the intestate estate descends to surviving spouse. If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, the first \$30,000 plus one-half of the balance of the intestate estate descends to surviving spouse. If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate descends to surviving spouse. § 2102.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 2501.
- (2) Testamentary Capacity - sound mind. § 2501.
- (3) Signature - testator's signature or mark or signed by someone under testator's direction. § 2502.
- (4) Witnesses - 2. § 2502.

INTERESTED WITNESS: Interest alone will not discredit or impeach the testimony of an attesting witness. In re Pochron's Estate, 367 Pa. 306, 80 A.2d 794 (1951).

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Unwitnessed will is prohibited. However, a handwritten will can be valid, if witnessed later, since witnesses need not be subscribing witnesses. § 3132.

MILITARY PROVISIONS: None.

PENNSYLVANIA

FIDUCIARY BOND REQUIREMENTS:

Individual Personal Representative - Bond required unless the individual personal representative is a resident and the will waives bond; the personal representative is a non-resident, but serves with a bonded resident co-personal representative; or the individual personal representative is a financial institution. § 3174.

Guardian - Bond not required unless required by will or unless the court, for cause shown, deems it advisable. § 5122.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor, but court has discretion not to appoint a nonresident. § 3157.

Guardian - Nonresident qualifies as guardian. § 5112. A person of the same religious persuasion as the minor's parents shall be preferred as guardian of the minor. § 113.

REVOCATION: A will is revoked by subsequent will, formal writing, or physical destruction with intent to revoke. If a person other than the testator destroys the will, two competent witnesses must prove that the testator directed the destruction. § 2505.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids provisions pertaining to ex-spouse. § 2507.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse of a person domiciled in Pennsylvania can take an elective share of one-third of the following property: Property passing from the decedent by will or intestacy, income conveyed by the decedent during marriage to his spouse or himself and another with right of survivorship, survivorship rights conveyed to a beneficiary of an annuity contract, property in excess of \$3,000 conveyed by the decedent during marriage and within one year of his death, and property conveyed by decedent during lifetime which at the time of death he or she had a power to revoke. A surviving spouse of a person not domiciled in Pennsylvania may take an elective share subject to the rights of fiduciaries, custodians, and obligors within Pennsylvania. Election must be made within six months

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of probate, or within six months after decedent's death, whichever is later. § 2202, 2203, 2210.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith, intentional wrong doing, or gross negligence. Tit. 20, §§ 5301 to 5310.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 8501 to 8505.

CHOICE OF LAW: A will is valid if executed in compliance with the laws of Pennsylvania, or in compliance with the law of the jurisdiction where the testator was domiciled at the time of execution or death. § 2504.1.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Personal estates may be summarily distributed if the gross value does not exceed \$10,000, exclusive of family payments. Tit. 20, § 3102.

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Pennsylvania Self-Proving Clause

Commonwealth of Pennsylvania

County of _____

I _____, testator, whose name is signed to the attached or foregoing instrument, having been duly qualified according to law, do hereby acknowledge that I signed and executed the instrument as my Last Will; that I signed it willingly; and that I signed it as my free and voluntary act for the purposes therein expressed.

Sworn or affirmed to and acknowledged before me, by _____, the testator, this _____ day of _____, 19 ____.

(Seal) _____

(Official capacity of
officer)

Affidavit

Commonwealth of Pennsylvania

County of _____

We, _____, _____, and _____, the witnesses whose names are signed to the attached or foregoing instrument, being duly qualified according to law, do depose and say that we were present and saw testator sign and execute this will as his Last Will; that _____ signed willingly and that _____ executed it as _____ free and voluntary act for the purposes therein expressed; that each of us in the hearing and sight of the testator signed the will as witnesses; and that to the best of our knowledge the testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

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Sworn or affirmed to and subscribed to before me by
_____, and _____,
witnesses, this _____ day of _____,
19____.

Witness

Witness

Witness

(Seal)

(Seal & Official capacity
of officer or state of
admission of attorney)

20 Pa. Cons. Stat. § 3132.1.

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STATUTE: P.R. Laws Ann. Tit. 31, § 2081 et seq.

ESTATE: Defined in Tit. 31 LPRA § 2090.

LEGAL PORTION: A portion of the estate reserved by law for predetermined heirs (Forced heirs) § 2361 (see below).

INTESTATE DESCENT & DISTRIBUTION: See § 2591 et seq. In the absence of will, nearest relative in descending line is entitled to estate. If more than one, in equal shares. Surviving spouse entitled to its portion in usufruct. If no descendants, then nearest relative in ascending line. Heirs predetermined by law.

BASIC WILL REQUIREMENTS:

1. Age - 14. § 2112 For holographic wills, persons must be of legal age (21 years old if living in Puerto Rico or age of majority where living) § 2151.
2. Testamentary Capacity - sound mind. § 2112.
3. Signature - testator's signature or in case of open will (see below), signed by someone under testator's direction and in his presence.
4. Witnesses - See Form of Wills.
5. Joint Wills - Joint wills prohibited. Art. 618, P.R. Civil Code, 31 LPRA § 2123; Colon v. Registrador, 67 P.R.R. 16, 67 DPR 17 (1947).

FORCED HEIRS: (31 LPRA § 2362) There are strict laws on the distribution of a decedent's estate imposed by the "forced heir" provisions of the Puerto Rico Civil Code. In a common law jurisdiction, the testator is largely free to dispose of his estate to whomever he or she chooses and may disinherit children or other persons. Under the Puerto Rico Civil Code, the testator is required to dispose of much of his estate to certain "forced heirs" predetermined by law and has only a very limited portion of the estate which he or she may dispose of as he or she chooses. A portion of this estate is subject to a form of life estate trust in favor of a

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surviving spouse, known as a usufruct, which is discussed below.

The testator's estate is determined in accordance with community property law. That is, the wife receives one-half of all community property. The remaining one-half, plus the testator's separate property, comprises the testator's estate for purposes of descent and distribution. These "forced heirs" and their required shares are as follows:

1. If the testator dies with one or more descendants and surviving spouse; then the estate is divided as follows:

a. LONG LEGITIM 2/3 of the estate is composed of:

(1) Strict Legitim Portion - 1/3 of the estate to be distributed equally among offspring and in the event of a pre-deceased offspring, the portion of the pre-deceased equally among offspring or descendants thereof as the case may be; and,

(2) Advantages or Extra Portion - 1/3 of the estate as desired among the descendants.

b. FREE DISPOSITION PORTION - 1/3 to be freely distributed as the testator desires. The surviving spouse has usufruct (i.e., life estate) in a portion equal to a child's share of the first 1/3 which must be paid from the Advantages or Extra Portion.

2. If the testator dies with one child and surviving spouse, then the estate is divided as follows:

a. 2/3 of the estate to the child; and,

b. 1/3 to be freely distributed as the testator desires.

The surviving spouse has usufruct in 1/3 of the total estate which must be paid from the child's portion.

Usufruct is defined as the right to enjoy a thing, title to which is vested in another, and to draw from it all profit, utility and advantage which it may produce. (See § 1501.)

3. If the testator dies without children but with surviving spouse, then the estate is divided as follows.

a. 1/2 of the estate to the parents or the survivor of them, or to the testator's ascendants if there is no surviving parent; and,

b. 1/2 to be freely distributed as the testator desires.

The surviving spouse has usufruct* in 1/3 of the estate which must be paid from the second half.

4. If the testator dies without children, without ascendants, but with surviving spouse, then the estate is divided as follows:

a. Testator may dispose of his entire estate as he desires; and

b. The surviving spouse has usufruct* in one-half of the estate.

RIGHTS OF SURVIVING SPOUSE: § 2411 et seq. If decedent has children or other descendants, at time of death, spouse is entitled to a portion of the estate in usufruct equal to that of the children or descendants. (In Puerto Rico there is no difference between legitimate, illegitimate or natural children.) If decedent leaves no descendants, but only ascendants, surviving spouse inherits one-third of estate in usufruct. If decedent leaves neither ascendants nor descendants, surviving spouse inherits one-half of estate in usufruct.

HEIR'S RIGHT OF ELECTION: The forced heir to whom the testator has left less than the legal portion due him by force of law may demand fulfillment thereof in lieu of the annulment of the will's hereditary provisions.

FORM OF WILLS: 2141 et seq. (All references are to Title 31.)

1. Holographic Will - Executed by the testator, totally handwritten by testator who must sign it and must express the day, month and year of execution. It must be filed for probate before the Superior Court of Puerto Rico of the last domicile or place of death of testator within

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5 years of the death of the testator. After probate proceedings, the holographic will, along with a certified copy of the transcript of proceedings will be ordered protocolized in the protocol of a Notary of the heir's choice.

No attestation is required for the holographic will. Some attorneys consider it a preferred form since the execution requirements are the least burdensome. If it contains any corrections, erasures, crossovers, interlineations or additions, the testator must so comment beneath his signature. The holographic will is held by the testator or some third party. Upon the death of the testator the will must be promulgated (filed for probate in continental terminology) within 5 years of the death of the testator.

2. Open Will - Written will read and executed in presence of three disinterested witnesses and a Notary with whom testator must be acquainted. (Note: A Notary Public in Puerto Rico must be an attorney at law.) The open will is executed before a Notary and three witnesses domiciled in the place of execution (known to the Notary) who know the testator and are otherwise qualified to be witnesses for a will (legal age, in full possession of their faculties, not related by blood or marriage, and not favored by the will).

3. Closed Will - Drafted by the testator, sealed in an envelope or container and delivered by the testator to the Notary for protocolization, before 5 witnesses domiciled in the place of execution, known to the Notary, who knew the testator and otherwise qualified as witnesses for a will (see 2 above) For other formalities see § 2202.

4. Noncupative (Oral) Will - Valid only if the testator is in immediate danger of death or an epidemic condition. Five witnesses are required if in danger of death, three if in danger of epidemic condition. § 2187 et seq.

5. Special (or Military, Maritime and Foreign) Will - Military and maritime wills and those executed in foreign countries are considered special wills.

a. Military and Maritime Wills. The Puerto Rico Civil Code recognizes this "special" type will. (Art. 626, Puerto Rico Civil Code (31 LPRA 2142)). However,

the Code does not define or regulate this type of will and there are no cases or decisions as to same. The Spanish Code, as amended, defines and regulates in detail the military will. It is basically a form of will for military personnel or persons who follow the armed forces, who, when belonging to mobilized forces in any manner participate in war or are within a war zone of operations, or are POW's, or aside from a war situation are quartered outside national territory. Under the Spanish Code, this type of will may be executed before any chaplain, judge advocate or any other officer. (Antonio Cicu - "El Testamento" - pages 128-129). It is quite possible that in case a "military" will is executed by a Puerto Rican, in view of the lack of regulation or statutory provisions in the Puerto Rico Civil Code, the Supreme Court of Puerto Rico may look to the requirements of the "source" that is the Spanish Code; but this remains speculation. In view of the importance of a will and the possibility of post mortem litigation as to the validity of such a military will, this type of will may require special legislation to clarify its validity.

b. Wills Executed by Puerto Rican Citizens Abroad.

(1) Under the laws of Puerto Rico (see PRLA § 2221), a will which is validly executed abroad according to the laws of the country (or state) wherein it is executed, is valid in Puerto Rico. However, when real property interests are to be transferred or affected by the provisions of the will, the laws of Puerto Rico regarding real property will apply. In addition, the restrictions on the distribution of the estate imposed by the "forced heirs" provisions must be observed, as they are strictly applied.

(2) The now-rescinded DA Pamphlet 27-12, Legal Assistance Handbook (1974) at paragraph 14-2d(II) formerly recommended that Legal Assistance Attorneys counselling clients from Puerto Rico, advise them to execute holographic wills because with such wills it would be easier to insure compliance with the required formalities of Puerto Rican law. More recently, it has been suggested that provisions of the Civil Code of Puerto Rico concerning recognition within Puerto Rico of wills executed abroad render this guidance obsolete. (See CPT C. Gnocchi, "Considerations on the Preparation

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of Wills for Domiciliaries of Puerto Rico," The Army Lawyer, January 1983.)

Article 666 of the Civil Code of Puerto Rico (PRLA § 2221) provides that citizens of Puerto Rico may, subject to some statutory exceptions (such as a statutory prohibition against joint wills or execution of wills by proxy or agent) execute wills outside the jurisdiction of Puerto Rico if they comply with and meet the established testamentary forms of the country or state in which they are executed. Although this concept constitutes a deviation from the formal requirements to be followed in the preparation, execution, and protocolization of the more common Puerto Rican wills, it follows the general principle of private international law (embodied at PRLA § 11) that the formal or legal requirements of wills shall be determined by the laws of the country in which they are executed. Therefore, the domiciliary of Puerto Rico who drafts and executes a last will and testament outside of Puerto Rico need not worry about the intricate formal requirements of the open, closed, or holographic wills executed in Puerto Rico. This concept has been recognized by the Puerto Rican Supreme Court in the case of Widow of Ruiz v. Registrar, 93 P.R.R. 893 (1967), which held that a will executed by a domiciliary of Puerto Rico outside its jurisdiction will be valid as to form if it meets the formal requirements of the country in which it was executed or those of Puerto Rico.

(3) If the will is executed outside of Puerto Rico, the will may be attested before any JA, Legal Assistance Officer, or any officer empowered under the UCMJ to act as a Notary, observing the formalities of the country or state wherein executed. The executed document must then be delivered or transmitted to a Notary in Puerto Rico for protocolization and recordation (see below). The same would apply for powers or documents affecting real property interests. Puerto Rico law on forced heirship and real property must be followed.

(4) Regardless of where the will is executed or the type of will that is used, a testator cannot overcome the forced heir statute. Any typical Army form will which leaves everything to the wife would have virtually no effect in Puerto Rico.

PROTOCOLIZATION REQUIREMENT:

1. The laws of Puerto Rico require that wills (powers of attorney or any other documents which affect any interest in real property) when executed abroad under the formalities of the country wherein executed, in order for it to be effective in Puerto Rico, must first be protocolized (formally acknowledged) before a Notary Public licensed in and for the Commonwealth of Puerto Rico. This is a relatively simple, although formal, procedure. A public deed of protocolization is prepared and drafted by the Notary to whom the document is delivered. A person (anyone who presents the document) executes the protocolization deed before the P.R. Notary. The Notary attaches the original of the deed to the document being protocolized. Thereafter, the deed and the attached document become part of the Notary's Protocol (collection of all public deeds executed before said Notary during each year and which by law the Notary must keep in bound volumes, subject to inspection by the Protocol Inspector of the Supreme Court). The Notary may thereafter issue as many certified copies as any party in interest may need. In the case of Wills and Powers, the Notary must file a report for recordation of the document with the Ministry of Wills and Powers at the Supreme Court of Puerto Rico within 24 hours (wills) or 72 hours (Powers) of the execution of the document. The certified copies of the protocolization deed must bear the recording notation, signed by the Register of Wills and Powers, before they may be presented to and be effective in the Registry of Property. The protocolization procedure need not directly involve the Legal Assistance Officer located outside of Puerto Rico. His involvement is limited to drafting the document and possibly attesting to the execution like any other case. However, he should advise the party executing the document that it must be delivered to a Notary in Puerto Rico for protocolization. Delivery for protocolization may be made at any time and by any person. Also, if one uses a civilian Notary Public outside of Puerto Rico, an additional document (a certification from the appropriate State official) is needed to certify to the authority of the Notary Public to act.

2. Legal Assistance Officers in jurisdictions outside of Puerto Rico should be able to prepare and authorize Wills (and Powers) for domiciliaries of Puerto Rico following the "wills executed abroad" requirements of

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the laws of Puerto Rico, and once executed have the documents sent to a Notary in Puerto Rico for the protocolization process. Notaries in Puerto Rico are required to be attorneys. The attorneys to whom these documents are sent could be legal personnel at Fort Buchanan (active duty Judge Advocates or civilian attorneys licensed in Puerto Rico) or U.S. Army Reserve Judge Advocates or Army National Guard Judge Advocates in Puerto Rico licensed to practice in Puerto Rico. Coordination, however, is critical, and military attorneys located outside Puerto Rico should consult these attorneys as to current policy. At one time because of the complexities in the execution of wills in Puerto Rico, no wills were prepared or executed in the Legal Assistance Office at Fort Buchanan, Puerto Rico. For the protection of service personnel, it was felt mandatory that the services of a Puerto Rican civilian attorney/notary be used for the matter. However, this policy has changed, and if qualified notaries are available at the Fort Buchanan Legal Assistance Office, services for execution or protocolization of wills for Puerto Rican domiciliaries may be provided. Legal Assistance Attorneys, however, should check before hand. If soldiers who have wills prepared by Legal Assistance Attorneys outside Puerto Rico return to Puerto Rico for protocolization of these instruments at Fort Buchanan, they should call for an appointment. Assistance to other Legal Assistance Officers located outside of Puerto Rico, in protocolizing wills and powers of attorney for Puerto Rican domiciliaries, may be available on a limited basis. Telephone confirmation may be required as a first step.

INTERESTED WITNESS: Neither heirs and legatees named in an open will, nor their relatives may be witnesses thereto. Prohibition does not extend to personal property.

FIDUCIARY BOND REQUIREMENTS:

Executor - No statutory provision requiring bond.

Guardian - Bond required unless waived by express terms of will.

FIDUCIARY RESIDENCY REQUIREMENTS: No statutory provision.

REVOCATION: A will is revoked by formal writing or subsequent will, either expressly or by failure of testator to state in latter his wish of leaving the former in force. Closed will with seal broken or cover torn found in testator's domicile presumed revoked.

UNIFORM SIMULTANEOUS DEATH ACT: No. Priority of death established in accordance with law of evidence.

CHOICE OF LAW: Citizens of Puerto Rico may make wills abroad according to the law of the country in which they are sojourning. Holographic wills may be executed anywhere and foreigners may execute them in their own language. § 2221 et seq. See "Wills Executed by Puerto Rican Citizens Abroad," at FORMS OF WILLS 5(b) above.

SELF-PROVING PROVISION: None. Judicial protocolization is required for all wills.

SAMPLE CLAUSES AND SIMPLE WILL FORM: Due to the formalities involved in the execution and protocolization of an open or closed will, it is recommended that it not be executed by anyone other than a Puerto Rican attorney. For those citizens of Puerto Rico who cannot have this done, one suggestion is that a holographic will be used. Basically, this would mean that you advise your client as to how to draft his will and then have him sit down and write it out completely himself. This is a rather time-consuming and cumbersome way, but is a safe manner for a citizen of Puerto Rico to execute a will when he is not physically present in his home of record.

A problem with this is that if the Puerto Rican solider located abroad prepares a will in his own handwriting which fails to comport with the "forced heir" provisions of Puerto Rican law, although it may be accepted for form, it may be disregarded for substance. Following, therefore, are sample clauses which may be used for two of the most common situations involving statutory forced shares in Puerto Rico, and a simple will form (with verbatim English translation) for a simple Puerto Rico:

A. Married testator with 2 children wishes to bequest the legal share to his forced heirs (children and spouse) and all the remainder of the estate to his parents.

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"I hereby bequeath and bequest to my children _____ and _____ born of my present marriage to _____ their full Global share to which they are by law entitled, and to my present wife _____, give, devise and bequest her fair legal share as the law requires.

The remaining freely disposable portion of my estate, I give, devise and bequest to my true living parents; to wit: _____ and _____ of _____ to share and share alike equally."

B. Married testator with 2 children wishes to bequest the strict legal share to one of them and benefit the other to the fullest extent possible.

"I hereby bequeath and bequest to my children _____ and _____ born of my present marriage to _____. The following amounts: To my child _____ the strict legal share to which he is entitled by law. To my child _____ all the remainder of my estate, exception made of that portion the law reserves for spouses."

Simple (Holographic) Will

In _____ Location _____, Today
 day _____ mo. _____ yr. _____, at
 hr. _____ p.m./a.m., I _____ name _____, of
 legal age, married, and residing at _____
 _____, being of sound mind hereby
 execute the following will, entirely written by me, so
 that my last and firm wishes be known and faithfully
 executed in accord with the following clauses:

First: That I married _____ on _____
 _____ of which union the following (no)
 children were born, _____ born on
 _____ and _____ born on
 _____ in _____ Location _____.

Second: I have no other children, therefore my only and
 true heirs are my above mentioned son(s) (daughter(s))
 _____ and _____.

Third: I bequeath to my wife _____, one
 third of my estate so that she may dispose of it as she
 wishes.

Fourth: I bequeath my son (daughter) _____
 one third of my estate and I also bequeath him (her) an
 additional third.

Fifth: I hereby declare that I have executed no prior
 wills, and if any should appear I hereby expressly revoke
 and annul it.

This is my last will, written by my own hand, which
 I now ratify and pray be followed in the name of almighty
 God. And so that it be known for all legal purposes, I
 execute the above will under my signature in the place,
 date and hour indicated in the first paragraph.

 Signature

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SIMPLE WILL

-Testamento Olografo-

En la ciudad de _____, hoy dia _____ a las _____ (dos, P.M.) _____, yo _____, mayor de edad, casado, y vecino de la calle _____, Puerto Rico, encontrandome en el completo y total goce y disfrute de mis facultades mentales, otorgo el presente testamento de mi puno y letra para hacer constar mi ultima y firme voluntad para que sea cumplida fielmente conforme a las siguientes clausulas:

Primero: (Que me case con _____ el dia _____ y en cuyo matrimonio (no) procreamos _____ hijos, _____ quien nacio el dia _____ en _____; y _____, quien nacio el dia _____ en _____, Puerto Rico.

Segundo: No he procreado hijos fuera de matrimonio, por lo que mis unicos y universales herederos son mis hijos antes mencionados, _____ y _____.

Tercero: Lego a mi esposa _____, un tercio de mis bienes en plena propiedad y para su libre disposicion. Lego a mi hijo _____ el tercio de libre disposicion y tambien le dejo el tercio de mejora.

Cuarto: Hago constar que no he otorgado antes otro testamento, pero si alguno apareciere, por la presente expresamente lo revoco y anulo.

Esta es mi ultima voluntad, escrita de mi puno y letra en la que me ratifico, y en nombre de Dios Todopoderoso, ruego se le de fiel cumplimiento.

Y para que asi conste, a todos los fines legales pertinentes otorgo el presente testamento bajo mi firma en el lugar, fecha, dia, mes, ano, y hora indicados en el primer parrafo.

(firma)

RHODE ISLAND

STATUTE: R.I. Gen Laws § 33-1-1 et seq.

INTESTATE DESCENT & DISTRIBUTION: Dower and curtesy have been abolished in Rhode Island. Whenever a person dies leaving a spouse, all real estate descends to spouse for life subject to any encumbrances. If decedent is survived by issue, the surviving spouse takes one-half of personal property. If decedent is not survived by issue, the surviving spouse takes the first \$50,000, plus one-half of remaining personalty. If decedent is not survived by issue or kindred, the surviving spouse takes the entire estate. §§ 33-1-5, 33-1-10, 33-25-1.

BASIC WILL REQUIREMENTS:

- (1) Age - 21 for realty; 18 for personalty. §§ 33-5-2, 33-5-3.
- (2) Testamentary Capacity - sane mind. §§ 33-5-2, 33-5-3.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 33-5-5.
- (4) Witnesses - 2. § 33-5-5.

INTERESTED WITNESS: Provisions concerning a subscribing witness are rendered null and void. § 33-6-1.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: Any soldier, airman or seaman in actual military service may dispose of his personal estate by will as he might have at common law. § 33-5-6.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by terms of will. §§ 33-17-1, 33-17-4, 33-17-1.3.

RHODE ISLAND

Guardian - Bond required unless waived by terms of will.
§§ 33-15-12, 33-17-4, 33-17.1.3.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident does not qualify as executor, unless court makes such appointment. § 33-8-7.

Guardian - Nonresident does not qualify as guardian unless appointed by express terms of will. § 33-15-7.

REVOCATION: A will is revoked by formal writing expressly declaring revocation, by physical destruction with intent to revoke, or by subsequent marriage of testator. §§ 33-5-9, 33-5-10.

EFFECT OF SUBSEQUENT DIVORCE: The entry of a final judgment in the divorce of a person shall act as a revocation of all provisions for the benefit of the former spouse in a will made by such person previous to such divorce, unless it appears from the will that the will was made in contemplation of such divorce. § 35-5.9.1. Divorce does not affect the validity of a will executed during the marriage. § 33-5-11.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take an elective share equal to life estate as provided by law of intestacy. Election must be made within 6 months of probate. § 33-6-22, § 33-25-4.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 18-7-1 to 18-7-26.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 33-2-1 to 33-2-9.

CHOICE OF LAW: Any written will subscribed by testator, executed outside this state in compliance with the law of the place of execution as the testator's domicile is deemed legally executed provided it is in writing and subscribed by testator. § 33-5-7. Questions concerning

real property located within the state shall be determined according to this state's laws. 33-6-5.

SMALL ESTATE ADMINISTRATION: Collection of money and other intangible personal property by affidavit is available when the value of the entire estate otherwise subject to probate, other than tangible personal property, is \$10,000 or less. Procedure is available to the person who paid or is legally responsible for paying funeral bill. § 33-24-1.

SELF-PROVING PROVISION: Yes. No prescribed form. A subscribing witness may file affidavit stating that signature is that of testator or person under his direction; that testator was of sound mind and legal age, and that both witnesses attested and subscribed the will in the presence of the testator and one another. § 33-7-26. Suggested affidavit form is:

STATE OF
COUNTY OF

In _____ on this _____ day of _____, 19____, before me personally appeared the undersigned, who, being duly sworn, depose and say that: they witnessed the execution of the will (codicil) of _____; that the signature to the will (codicil) is in the handwriting of the testator or was made by some other person for the testator, in the testator's presence and by the testator's express direction; that said testator so subscribed said will (codicil) and declared the same to be his last will (a codicil to his last will) in their presence; that they thereafter subscribed the same to be his last will (a codicil to his last will) in their presence; that they thereafter subscribed the same as witnesses in the presence of said testator and in the presence of each other; that at the time of execution of said will (codicil) the testator appeared to be of sound mind and 18 years of age or over; and that the signature of the witnesses on said will are genuine.

subscribed and sworn to before me on the day and date first above written,

Notary public

RHODE ISLAND

SOUTH CAROLINA

SOUTH CAROLINA

STATUTE: S.C. Code § 62-2-101 et seq. (New code's effective date 1 July 1987).

INTESTATE DESCENT & DISTRIBUTION: If there is no surviving issue of the decedent, the surviving spouse takes the intestate estate. If there are surviving issue, the surviving spouse takes one-half of the intestate estate. § 62-2-102.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 62-2-501.
- (2) Testamentary Capacity - sound mind. § 62-2-501.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 62-2-502.
- (4) Witnesses - 2 (for wills executed after 27 June 1984. Prior to that time 3 witnesses were required). § 62-2-502.

INTERESTED WITNESS: Any devise or bequest to witness or spouse of witness is valid up to the amount the witness would have received through law of intestacy. § 62-2-504.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: None.

SOUTH CAROLINA

FIDUCIARY BOND REQUIREMENTS:

Executor - No bond required if executor is resident of South Carolina and will expressly waive bond. Nonresident must provide a bond unless the will expressly waives bond. § 62-3-603.

Guardian/Conservator - The court has discretion to require a bond. § 62-5-411.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided resident appointed to accept service of process. § 62-3-203.

Guardian - Nonresident may be guardian. § 62-5-311, § 62-5-410.

REVOCATION: A will is revoked by formal writing expressly or by inconsistency revoking will, by physical destruction with intent to revoke, or by subsequent marriage unless will expressly provides otherwise. § 62-2-506.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment revokes all dispositions in favor of spouse, unless the will expressly provides otherwise. § 62-2-507.

SPOUSE'S RIGHT OF ELECTION: If decedent domiciled in state, spouse elective share is one-third of estate. If decedent not domiciled in state, spouse's elective share governed by law of decedent's domicile at death. § 62-2-201.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 20-7-140 to 20-7-240.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived.

NOTE: Any person who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased

SOUTH CAROLINA

the decedent for purposes of exempt property and intestate succession. § 62-2-104.

CHOICE OF LAW: Any written will subscribed by the testator which has been duly executed in any foreign state or country in accordance with the laws thereof, whether or not such state or country be the domicile of the testator, is deemed legally executed. § 62-2-505.

SELF-PROVING PROVISION: Yes. § 62-2-503.

(a) Using Form 1, any will may be simultaneously executed, attested, and made self-proved, by acknowledgment by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal.

(b) Using Form 2, an attested will may at any time subsequent to its execution be made self-proved by the acknowledgment by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached, or annexed to the will.

SMALL ESTATE ADMINISTRATION: Collection of personal property by affidavit is available when the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$10,000. § 62-3-1201. Summary administration is not required when the value of the entire estate, less liens and encumbrances, does not exceed \$10,000 and exempt property, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent. § 62-3-1202A.

SOUTH CAROLINA

Form 1 - Self-Proving Clause for Use at Time Will is Executed

I _____, the testator, sign my name to this instrument this _____ day of _____, 19____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____ and _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

SOUTH CAROLINA

The State of _____

County of _____

Subscribed, sworn to and acknowledged before me by
_____, the testator and subscribed and
sworn to before me by _____ and
_____, witnesses, this _____ day of
_____, 19____.

_____(SEAL)

(Signed)

(Official capacity of
officer)

Source:
S.C. Code, tit. 62. § 2-503.

SOUTH CAROLINA

Form 2 - Self-Proving Clause for Use Subsequent to
Execution of Will

The State of _____

County of _____

We, _____, and _____, and
_____ the testator and the witnesses,
respectively, whose names are signed to the attached or
foregoing instrument, being first duly sworn, do hereby
declare to the undersigned authority that the testator
signed and executed the instrument as his last will and
that he had signed willingly (or willingly directed
another to sign for him), and that he executed it as his
free and voluntary act for the purposes therein
expressed, and that each of the witnesses, in the
presence and hearing of the testator, signed the will as
witness and to the best of his knowledge the testator
was at that time eighteen years of age or older, of sound
mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged before me by
_____, the testator, and subscribed and sworn
to before me by _____, and _____,
witnesses, this _____ day of _____, 19____.

(SEAL)

(Signed)

(Official capacity of
officer)

SOUTH DAKOTA

STATUTE: S.D. Compiled Laws Ann. § 29-1-1 et seq.

INTESTATE DESCENT & DISTRIBUTION: If the decedent leaves a surviving spouse and only one child, or the lawful issue of one child, the estate descends in equal shares to spouse and child, or issue of child. If the decedent leaves a spouse and more than one child living, or one child living and the lawful issue of a deceased child, the surviving spouse takes one-third and remainder in equal shares to the children and to the lawful issue of any deceased child, by right of representation but if there are no children living at decedent's death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving spouse, but leaves children, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child by right of representation. If the decedent is not survived by issue, the surviving spouse inherits \$100,000 and one-half of the excess the other half goes to decedent's mother and father, equally. If either is dead, the whole goes to the other. If neither survive, then the other half goes equally to the brothers/sisters of decedent and to the children or grandchildren of any deceased brothers/sisters by right of representative. If decedent leaves no issue, nor husband or wife, the estate must go to his father/mother equally, or if either is dead, then to the other. §§ 29-1-5, 29-1-6.

BASIC WILL REQUIREMENTS:

- (1) Age - over age of 18. § 29-2-3.
- (2) Testamentary Capacity - sound mind. § 29-2-3.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 29-2-6.
- (4) Witnesses - 2. § 29-2-6.

SOUTH DAKOTA

INTERESTED WITNESS: Provisions concerning a witness are void unless will attested by two other witnesses, except that an interested witness may always take up to the amount he or she would have received through intestacy. A creditor can be a competent witness if all he has is a charge on the estate. §§ 29-2-16, 29-2-17.

NUNCUPATIVE (ORAL) WILL: Prohibited. See Military Provisions for exception. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities, but to make the same valid and entitled to be admitted to probate the following requirements must be observed:

1. The estate bequested may not exceed \$1,000.
2. Will must be provided by two witnesses who were present at the making thereof, one of whom was asked by testator at the time to bear witness that such was his will.
3. Decedent must have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

HOLOGRAPHIC WILL: Referred to as "olographic," valid if entirely written, signed and dated by the hand of testator. No attestation required. § 29-2-8.

MILITARY PROVISIONS: A testator may dispose of property up to \$1,000 by oral will, provided that two witnesses are present and decedent at time of execution is in actual military service and in actual contemplation or peril of death. § 29-2-9.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by express terms of will or if all heirs give a written waiver. §§ 30-13-3, 30-13-6.

Guardian - Bond required. § 30-27-30.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor, but must appoint resident agent for service of process. § 30-13-2.

Guardian - Nonresident qualifies, but must appoint a resident agent for service of process. §§ 30-27-19, 30-27-38.

REVOCATION: A will or any part thereof may be revoked by subsequent will or formal writing contains an express revocation or inconsistency, or by physical destruction with intent to revoke. Subsequent will acts as revocation either expressly or by inconsistency. Subsequent marriage or birth also acts as revocation. §§ 29-3-1, 29-3-2, 29-3-7, 29-3-8.

EFFECT OF SUBSEQUENT DIVORCE: Implied revocation of wills by divorce not in force in South Dakota. In re Nenaber's Estate, 55 S.D. 257, 255 N.W. 719 (1929).

SPOUSE'S RIGHT OF ELECTION: Surviving spouse is entitled to an elective share of the augmented estate as determined by the court not to exceed \$100,000 or one-third of the estate. § 30-5A-1.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence.

NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 18 for some property and age 21 for other property. §§ 55-10A-1 to 55-10A-26.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will, living trusts, deeds or insurance contracts, for devolution of his property in the event of simultaneous death. §§ 29-8-1 to 29-8-8.

SOUTH DAKOTA

CHOICE OF LAW: If on hearing it appears that will has been proved and admitted to probate in another state or country, and that it was executed in accordance with the law of the place of execution or testator's domicile, it must be admitted to probate. § 29-2-10.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Collection of personal property by affidavit is available when the value of the gross personal estate does not exceed \$5,000. § 30-11A-1. Summary administration is available for testate and intestate estates where the gross value of real and personal property does not exceed \$60,000. § 30-11-1.

SOUTH DAKOTA

South Dakota Self-Proving Clause

THE STATE OF _____
COUNTY OF _____

We, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal)

(Signed)

(Official capacity of
officer)

Source:
S.D. Compiled Laws Ann. § 29-2-6.1.

SOUTH DAKOTA

TENNESSEE

STATUTE: Tenn. Code Ann. § 30-1-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: If the decedent is survived by children or their descendants, the surviving spouse is entitled to a child's share or one-third of the estate, whichever is greater. If the decedent leaves no children or descendants, the surviving spouse inherits the entire estate. § 31-2-104.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 32-1-102.
- (2) Testamentary Capacity - sound mind. § 32-1-102.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 32-1-104.
- (4) Witnesses - 2. § 32-1-104.

INTERESTED WITNESS: Provisions concerning an interested witness are void unless will is also attested by two disinterested witnesses. However, an interested witness is entitled to so much of the devise as he would have received if the testator died intestate. § 32-1-103.

NUNCUPATIVE (ORAL) WILL: Valid only if made by a person in imminent peril of death and the testator died as a result of the impending peril. Oral will must be declared before two disinterested witnesses and reduced to writing by one witness within 30 days, and submitted to probate within 6 months after the death of the testator. An oral will may dispose of personal property not exceeding \$1,000 (except that in case of persons in active military, air, or naval service in time of war the aggregate amount may be \$10,000). NOTE: An oral will neither revokes nor changes an existing written will. § 32-1-106. See also T.C.A. § 32-2-106. Proof of Nuncupative Will regarding time for proof and notice requirements.

HOLOGRAPHIC WILL: Valid if material provisions and signature in the testator's handwriting. Attestation by

TENNESSEE

witnesses is not necessary. § 32-1-105. Handwriting must be proved by two witnesses in open court.

MILITARY PROVISIONS: Members of the armed forces in time of war may dispose of up to \$10,000 of personalty by oral will. §§ 32-1-106, 32-2-205.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise. Additionally, bond can be waived when all beneficiaries are adults and given written consent to waiver, when a bank is executor and is excused from requirements of bond by T.C.A. § 45-2-1005, and when the personal representative and sole beneficiary are the same person. § 30-1-201.

Guardian - Bond required unless will provides otherwise. § 34-2-203.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident cannot serve as executor unless a resident is also appointed to serve with the nonresident. Banks and trust companies are exempted from this requirement. Nonresident persons, banks and trust companies must appoint a resident agent (Secretary of State for service of process. § 35-50-107.

Guardian - Same requirement as for executor above.

REVOCATION: No statutory provision. Tennessee case law provides that revocation requires concurrence of an intent to revoke and some act by the testator manifesting that intent. (In re Dye's Estate, 565 S.W.2d 219 (1977)).

EFFECT OF SUBSEQUENT DIVORCE: A divorce or annulment eliminates the spouse as a beneficiary, power holder, or fiduciary of a will. § 31-1-102.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse can take an elective share of one-third of the net estate. The election must be within 9 months of the decedent's date of death or 6 months of the date of probate, whichever is later. §§ 31-4-101, 31-4-102.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 35-7-101 to 110; 35-7-106.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 31-3-101 to 31-3-107.

CHOICE OF LAW: A will is valid if executed in accordance with T.C.A. §§ 32-1-101 to 32-1-108 inclusive, or a written will executed outside Tennessee, in accordance with the law of the place of its execution or by the law of the decedent's domicile at the time of execution. §§ 32-1-107.

SELF-PROVING PROVISION: Any or all of the attesting witnesses to any will may, at the request of the testator or, after his death, at the request of the executor or any person interested under the will, make and sign an affidavit before any officer authorized to administer oaths in or out of this state, stating such facts as they would be required to testify to in court to prove the will, which affidavit shall be written on the will or, if that is impracticable, on some paper attached thereto, and the sworn statement of any such witness so taken shall be accepted by the court of probate when said will is not contested as if it had been taken before such court. § 32-2-110. For sample form, see page 3-13 supra.

SMALL ESTATE ADMINISTRATION: Collection of personal property by affidavit is available after the devisees or legatees of a testate estate or the heirs of an intestate estate file the affidavit with the clerk of the court. § 30-4-103.

TEXAS

STATUTE: Tex. Prob. Code Ann. § 1 et seq. (Vernon)

INTESTATE DESCENT & DISTRIBUTION: (1) Community Estate: Entire community estate goes to surviving spouse unless children or their descendants also survive, in which case the children or their descendants get half and the surviving spouse gets half. § 45. (2) Separate Estate: All personal property and half realty to surviving spouse if no children or descendants survive, balance to decedent's other relatives. If children or their descendants also survive, spouse gets one-third of all personalty, and a life estate in one-third of decedent's realty. § 38.

§ 39. (Surviving spouse may have homestead right to occupy entire homestead for life, even if homestead was separate property of deceased spouse, Article 272.)

BASIC WILL REQUIREMENTS:

(1) Age - 18, or married or in the Armed Forces if under that age. § 57.

(2) Testamentary Capacity - sound mind. § 57.

(3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 59.

(4) Witnesses - 2. (Must be 14 or older). § 59.

INTERESTED WITNESS: If the will cannot be otherwise established, a devise or bequest to a subscribing witness shall be void. The witness, if entitled, can take an intestate share not to exceed the value of the bequest in the will. § 61.

NUNCUPATIVE (ORAL) WILL: Valid if made in the time of the last sickness, at home or where testator has resided for at least 10 days, except when the testator is taken sick away from home and dies before he returns, and must be proved by three witnesses when the value of the estate exceeds \$30.00. § 65.

TEXAS

HOLOGRAPHIC WILL: Valid if written wholly in the testator's handwriting and signed by testator. § 59.
NOTE: Will may be made self-proved at any time by the attachment of an affidavit by the testator to the effect that the instrument is his last will; he was of legal age at the time of execution; he was of sound mind; and he has not revoked the will. § 60.

MILITARY PROVISIONS: See Basic Will Requirements - Age, and Nuncupative (Oral) Will. Self-proving provision of § 59 is important in military situations, see below:

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise or personal representative is a corporate fiduciary. §§ 194, 195. Note: A corporation must be authorized to act as a fiduciary in Texas.

Guardian - Bond required unless will provides otherwise. §§ 193, 195.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor provided a resident agent for service of process is appointed. § 78.

Guardian - No statutory provision.

REVOCATION: Will is revoked by a subsequent will, formal writing, or physical destruction or cancellation with intent to revoke. § 63.

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions pertaining to the ex-spouse. § 69.

SPOUSE'S RIGHT OF ELECTION: None. Statutory allowances set out in section 270 et seq. of the Probate Code.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 18. Tex. Property Code 141.002 to 141.014, §§ 1 to 10 (Vernon).

UNIFORM SIMULTANEOUS DEATH ACT: No. However, person must survive the decedent by 120 hours for purposes of homestead allowance, exempt property, and intestate descent and distribution. § 47.

CHOICE OF LAW: The law of the testator's domicile governs the execution of his will disposing of personalty. The law of the place where the property is situated governs the execution of his will disposing of realty. Boman v. Gibbs, 443 S.W. 2d 267 (1969).

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Collection of a small estate by affidavit is available when the value of the entire estate, excluding homestead and exempt property, does not exceed \$50,000. § 137. A summary distribution statute is available where the value of the entire estate, excluding homestead and exempt property, does not exceed the family allowance due the surviving spouse and minor children. § 139.

TEXAS

Texas Self-Proving Clause

THE STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument, in their respective capacities, and, all of said persons being by me duly sworn, the said _____, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament and that he had willingly made and executed it as his free act and deed for the purposes therein expressed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time eighteen years of age or over (or, being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Testator

Witness

Witness

TEXAS

Subscribed and acknowledged before me by the said
_____, testator, and subscribed and sworn
before me by the said _____, and
_____, witnesses, this _____
day of _____, A.D., _____.

(Seal)

Signed

(Official capacity of
officer)

Source:

Tex. Prob. Code Ann. § 59 (Vernon).

TEXAS

TEXAS INDEPENDENT EXECUTOR PROVISION

I hereby appoint _____, of _____, as Independent Executor(rix) of this my LAST WILL AND TESTAMENT, (and I direct that no bond or other security shall ever be required of him (her) as such;) and I further direct that no other actions shall be had in the county court or in any other court relative to the administration of my estate other than to prove and record this will and to return an inventory and appraisal and list of claims of my estate; in the event that he (she) shall predecease me or for any reason refuse or be unable to serve or to continue serving as Executor(rix) hereof, then I hereby appoint _____, of _____, as Independent Executor(rix) in his (her) stead, to serve without (with) bond or (and) surety and with the same powers and authority.

I hereby empower my said Executor(rix) to do any and every act and thing which he (she) in his (her) uncontrolled discretion shall deem advisable in reference to my estate, and without in any way limiting his (her) powers I hereby specially empower him (her) to sell any and all property belonging to my estate for such price and upon such terms as to him (her) may seem proper; to make leases of every character including oil, gas and mineral leases upon all property belonging to my estate, to collect all moneys belonging to my estate; to vote all shares of stock standing in my name or belonging to me; and to compensate all claims in favor of or against my estate.

UTAH

STATUTE: Utah Code Ann. § 75-1-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: The intestate share of the surviving spouse is the entire intestate estate unless there are surviving issues, one or more of whom are not issues of the surviving spouse, in which case the intestate share of the surviving spouse is one-half of the intestate estate. § 75-2-102.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 75-2-501.
- (2) Testamentary Capacity - sound mind. § 75-2-501.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 75-2-502.
- (4) Witnesses - 2. § 75-2-502. All witnesses must be over the age of 18. § 75-2-505.

INTERESTED WITNESS: A will or any provision thereof is not invalid because will is signed by an interested witness. However, witness is limited to the lesser of the amount provided in the will or the amount he or she would have received had testator died intestate. § 75-2-505.

SEPARATE WRITINGS: Writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing in sufficient language to permit its identification. (This provision is often used to list personal gifts as desired by the testator). § 75-2-510.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Valid if signature and all material provisions are in handwriting of testator. § 75-2-503.

MILITARY PROVISIONS: None.

UTAH

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by express terms of will, by all devisees, or by the court. § 75-3-603.

Guardian - Court may require bond, not mandatory. § 75-5-105.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident qualifies as executor and is subject to personal jurisdiction. §§ 75-3-203, 75-3-602.

Guardian - Nonresident may be guardian as long as such appointment is in the best interest of the minor. § 75-5-206.

REVOCATION: A will or any part thereof may be revoked by subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke. § 75-2-507.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions pertaining to ex-spouse unless the will expressly provides otherwise. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. § 75-2-508.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take elective share equal to one-third of estate multiplied by a fraction. (For formula, see § 75-2-201). Election must be made within 6 months after probate. § 75-2-201.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith, intentional wrongdoing, or gross negligence. §§ 75-5-601 to 75-5-610.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 75-2-1001 to 75-2-1008. A devisee who does

not survive the testator by 120 hours is treated as if he predeceased the testator. § 75-2-601.

CHOICE OF LAW: A written will is valid if executed in compliance with the law at the time of execution of the place of execution, or the law of the place where at the time of execution or at time of death the testator is domiciled. § 75-2-506. Testator can select governing state law in will with certain limitations. § 75-2-602.

SELF-PROVING PROVISION: Yes. For form, see next page.

SMALL ESTATE ADMINISTRATION: Collection of personal property by affidavit is available where the value of the entire estate subject to administration, wherever located, less liens and encumbrances, does not exceed \$25,000. § 75-3-1201. Summary administrative procedure is available where the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent. § 75-3-1203.

LIVING WILL: 75-2-1101 et seq.

UTAH

Utah Self-Proving Clause

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19_____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes expressed in it, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____ and _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator and of each other, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

UTAH

STATE of _____
COUNTY of _____

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn
to before me by _____, and _____,
witnesses, this _____ day of _____.

(Seal)

(Signed)

(Official capacity of
officer)

Utah Code Ann. § 75-2-504.

VERMONT

STATUTE: Vt. Stat. Ann. tit. 14, § 1 et seq.

INTESTATE DESCENT & DISTRIBUTION: Surviving spouse takes dower or curtesy equal to one-third of real property. If decedent leaves no surviving issue, the surviving spouse inherits the first \$25,000, plus one-half the remainder. If decedent leaves no surviving kindred, the surviving spouse inherits the entire estate. If decedent leaves surviving issue, surviving spouse's share limited to dower or curtesy. § 551.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. V.S.A. § 1 (see also 1 V.S.A. § 173).
- (2) Testamentary Capacity - sound mind. § 1.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 5.
- (4) Witnesses - 3. § 5.

INTERESTED WITNESS: Any devise or legacy to a witness or spouse of witness, other than heir at law, is void unless attested by three other competent witnesses. § 10.

NUNCUPATIVE (ORAL) WILL: A testator may dispose of personal property up to \$200 by oral will, provided that will is reduced to writing by a person present at execution within 6 days of date of execution and it is presented for probate within six months from the death of the testator. § 6.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: A soldier in actual military service or seaman at sea may dispose of his personal property as he might have done at common law. § 7.

VERMONT

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by terms of will.
§§ 906, 907.

Guardian - Bond required. § 2751.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident may be executor within the discretion of the court, provided he designates resident to accept service of process. § 904.

Guardian - Nonresident may not be a guardian unless he or she is named in a will or is a relative of the ward.
§ 2603.

REVOCATION: A will is revoked by subsequent will, or formal writing, or physical destruction with intent to revoke by the testator or by someone in the presence or under his express direction. § 11.

EFFECT OF SUBSEQUENT DIVORCE: No statutory provision.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take elective share equal to dower or curtesy within 8 months after probate. § 465.

LICENSE TO SELL PROPERTY OF DECEDENT: Act 233, 1984 Vermont Legislature, codified at 14 V.S.A. § 1653 provides that a license is required to sell personal property of the decedent when beneficial to interested persons. Typically this license to sell may be issued by a court only after notice to all interested persons and a hearing. However, if the license to sell personal property is expressly confessed by will, the court may issue a license without notice or hearing, with one exception. The exception includes a situation where there is a dwelling house in which a surviving spouse or an heir, devisee or legatee is residing. In that case, there must be notice and a hearing unless the person seeking the license has the written consent of the party residing in the dwelling house.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence

of bad faith, intentional wrongdoing, or gross negligence. §§ 3201 to 3209.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 621 to 627.

INVESTMENT STANDARDS FOR GUARDIANS: Act 244, 1984 Vermont Legislature, codified at 14 V.S.A. § 2653 requires the following for guardians, unless specifically set forth otherwise in a will or trust: The guardian must invest or reinvest cash resources of a minor in bank account, insured by the FDIC securities issued by the Government to the U.S. or by a state or municipality. Not more than 50% of the cash resources may be invested in corporate bonds rated AAA by Moody and in common stocks listed on the New York Stock Exchange. Notice to the court must be given within 15 days from the date of any such investment.

CHOICE OF LAW: A written will signed by testator is legally enforceable in this state if executed in compliance with the law either of the place where executed or of the testator's domicile. § 112.

SELF-PROVING PROVISION: No.

SMALL ESTATE ADMINISTRATION: Informal administration available when the decedent owned no real estate and had personal assets not exceeding \$10,000 in true cash value. § 1901.

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STATUTE: V.I. Code Ann. tit. 15, ch. 1 et seq.

INTESTATE DESCENT & DISTRIBUTION:

If the decedent is survived by children or their issue, the surviving spouse is entitled to one-third of the estate. If the decedent is survived by the parents, but no children, the surviving spouse is entitled to take \$5,000, plus one-half of the remaining estate. If the decedent is survived by only one parent, the surviving spouse takes \$5,000, plus one-half of the remainder. If the decedent leaves no children, parents, or sibling, the surviving spouse inherits the entire estate. Ch. 3, § 84.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. Ch. 1, §§ 2,7.
- (2) Testamentary Capacity - sound mind and memory. Ch. 1, §§ 2,7.
- (3) Signature - testator's signature at end of will. Ch. 1, § 13.
- (4) Witnesses - 2. Ch. 1, § 13.

INTERESTED WITNESS: Provisions concerning a witness are void unless the will is also attested by two disinterested witnesses. However, an interested witness is entitled to so much of the devise as he or she would have received if the testator died intestate. Ch. 1, § 19.

NUNCUPATIVE (ORAL) WILL: Prohibited. See Military Provisions for exception.

HOLOGRAPHIC WILL: Prohibited. See Military Provisions for exception.

MILITARY PROVISIONS: A soldier or sailor while in actual military or naval service can execute a nuncupative or holographic will in the following manner:

- (1) Nuncupative Will - valid if made before two witnesses.

VIRGIN ISLANDS

(2) Holographic Will - valid if wholly written by the testator.

Such will shall become invalid 1 year after the soldier or sailor leaves military service provided he possesses testamentary capacity at that time. Ch. 1, § 8.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless will provides otherwise. Court may require nonresident executor to file bond despite waiver in the will. Court may waive bond requirement even if will does not so direct. Ch. 15, § 239.

Guardian - Bond required. Ch. 51, § 881.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident cannot serve as executor unless he files such bond as required by the court and appoints an agent or attorney resident in writing for service of process. Ch. 15, 235.

Guardian - No statutory provision. Preference is for the nearest relative.

REVOCATION: A will may be revoked by a subsequent will, formal writing, or physical destruction with the intent to revoke. Ch. 1, § 26.

EFFECT OF SUBSEQUENT DIVORCE: No statutory provision.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse can elect to take his or her intestate share. However, the elected share cannot exceed the value of one-half of the estate. Ch. 1, § 10.

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and uncompensated custodian not liable for losses of property in absence of bad faith or gross negligence. Tit. 15, §§ 1241 to 1250.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed

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of as if testator had survived. This chapter shall not apply when testator expressly provides in the will, living trust, deeds or contracts of insurance for devolution of his property in the event of simultaneous death. Tit. 15, § 88. (Substantial adoption of the Uniform Simultaneous Death Act.)

CHOICE OF LAW: A written will subscribed by the testator is valid if executed in accordance with the laws of the Virgin Islands, or in accordance with the law of the place where executed or of the testator's domicile. Ch. 1, §§ 15, 16.

SELF-PROVING PROVISION: No.

SMALL ESTATE ADMINISTRATION: Estates, wherein the value of assets is less than \$300, may be administered in a summary manner, under such general and special rules as may be prescribed by the District Court of the Virgin Islands (see Rule 35 of the Rules of the District Court of the Virgin Islands, set out in Appendix V following Title 5, Virgin Island Code Annotated).

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VIRGINIA

STATUTE: Va. Code Ann. § 64.1 et seq.

INTESTATE DESCENT & DISTRIBUTION: Personalty and real estate pass to the surviving spouse, in fee simple, unless the intestate is survived by one or more children or their descendants whom are not children or their descendants of the surviving spouse. If such children or their descendants survive, then one-third of the personalty and real estate pass to the surviving spouse; two-thirds pass to the intestate's children and their descendants. §§ 64.1-1, 64.1-11, 64.1-19.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 64.1-47.
- (2) Testamentary Capacity - sound mind. § 64.1-47.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 64.1-49.
- (4) Witnesses - 2. § 64.1-49.

INTERESTED WITNESS: A will or any provision thereof is not invalid because it is signed by an interested witness. § 64.1-51.

NUNCUPATIVE (ORAL) WILL: Prohibited. See Military Provisions for exception.

HOLOGRAPHIC WILL: Valid if wholly written and signed by testator, and handwriting proved by at least two disinterested witnesses. Attestation not required. § 64.1-49.

MILITARY PROVISIONS: A soldier in actual military service or a seaman at sea may dispose of his personal property by an oral will. § 64.1-53.

FIDUCIARY BOND REQUIREMENTS:

Personal Representative - Bond required with security unless the will waives security of an executor nominated therein or unless the personal representative, or

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representatives if not more than three, is the sole beneficiary or beneficiaries. §§ 64.1-119, 64.1-121.

Guardian - Bond required with good security unless will provides otherwise and court deems it unnecessary. § 31-6.

FIDUCIARY RESIDENCY REQUIREMENTS:

Personal Representative - Only a natural person who resides in Virginia may be a personal representative, trustee under a will, or a guardian. Exceptions:

1. A corporation authorized to do business in Virginia;

2. When a resident is also appointed to serve with the nonresident;

3. A decedent's parent, child or other decedent, son or daughter-in-law, or surviving spouse; or

4. When the personal representative, or representatives if not more than three, is the sole beneficiary or beneficiaries.

In the case of exception 3 and 4, a bond with security must be filed, notwithstanding § 64.1-121. § 26.59.

Guardian - Same requirement as for personal representative above.

REVOCATION: A will may be revoked by a subsequent will or codicil, or other writing executed in the same manner as required of a will, or by actual physical destruction with the intent to revoke by the testator or some other person by his direction or in his presence. § 64.1-58.1.

EFFECT OF SUBSEQUENT DIVORCE: A divorce vinculo matrimonii (a full divorce) revokes all provisions in favor of the testator's divorced spouse. § 64.1-59.

SPOUSE'S RIGHT OF ELECTION: May elect against the will within one year after the admission of the will to probate. Then receives one-third, in fee simple, of the real estate which the decedent could have devised by will. Also receives one-half of the personalty surplus

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(after funeral expenses, charges of administration and debts) if no children or their descendants of the decedent survive; otherwise, receives one-third of the personalty surplus. §§ 64.1-13, 64.1-16, 64.1-19, 64.1-30.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. §§ 31-37 to 31-54.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 64.1-97 to 64.1-104.

CHOICE OF LAW: A will is valid if executed in accordance with the laws of Virginia. A will of a person domiciled out of Virginia is valid as to personal property, if executed in accordance with the law of the state in which the testator was domiciled. § 64.1-53.

SELF-PROVING PROVISION: Yes, two options, see next two pages. Under the second option, only the signature of the person authorized to administer oaths is required; the signatures of the testator and the witnesses is not used. §§ 64.1-87.1.

SMALL ESTATE ADMINISTRATION: Collection of personal property by affidavit is available where the value of the entire personal probate estate, wherever located, does not exceed \$5,000.

VIRGINIA

Virginia Self-Proving Clause

State of Virginia

County/City of _____

Before me, the undersigned authority, on this day personally appeared _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, _____ the testator, declared to me and to the witnesses in my presence that said instrument is his last will and testament and that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will and testament in the presence of said witnesses, who in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

Testator

Witness

Witness

Witness

VIRGINIA

Subscribed, sworn and acknowledged before me by
_____, the testator, subscribed and sworn
before me by _____, _____, and
_____, witnesses, this _____ day
of _____, A.D., _____.

(Seal)

Signed

(Official capacity of
officer)

Source:
Va. Code Ann. § 64.1-87.1.

VIRGINIA

Virginia Alternative Self-Proving Clause

State of Virginia

County/City of _____

Before me, the undersigned authority, on this day personally appeared _____, _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, _____ the testator, declared to me and to the witnesses in my presence that said instrument is his last will and testament and that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will and testament in the presence of said witnesses, who in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

Sworn and acknowledged before me by _____, the testator and _____, witness, and _____, witness, this _____ day of _____ A.D., _____.

Signed _____

(Official Capacity of
Officer)

Source:

Va. Code Ann. § 64.1-87.1.

WASHINGTON

STATUTE: Wash. Rev. Code Ann. § 11.02.005 et seq.

INTESTATE DESCENT & DISTRIBUTION: Surviving spouse inherits decedent's share of community property upon death of spouse. If decedent is survived by issue, surviving spouse inherits one-half of separate property. If decedent is survived by one or more of his parents, or by one or more of the issue of one or more of his parents, surviving spouse inherits three-quarters of the separate property. Surviving spouse inherits all of separate property if decedent is not survived by issue, parent, or issue of a parent. § 11.04.015.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 11.12.010.
- (2) Testamentary Capacity - sound mind. § 11.12.010.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 11.12.020.
- (4) Witnesses - 2. § 11.12.020.

INTERESTED WITNESS: Provisions concerning a witness are void unless will attested by two other competent witnesses, except that an interested witness may always take up to the amount he would have received through intestacy. § 11.12.160.

NUNCUPATIVE (ORAL) WILL: Any testator may dispose of personal property not exceeding \$1,000 by oral will, provided that two witnesses are present and the will is committed to writing. Also, it must be made during last illness and probated within 6 months. § 11.12.025.

HOLOGRAPHIC WILL: Prohibited. Foreign holographic will is admissible to probate in Washington if valid by laws of either (1) state where executed or (2) testator's domicile at execution. § 11.12.020.

MILITARY PROVISIONS: Any member of the armed forces or merchant marines may dispose of wages or personal property by oral will. See § 11.12.025.

WASHINGTON

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required unless waived by terms of will, the executor is the surviving spouse, or the executor is a bank or trust company. § 11.28.185.

Guardian - Bond required unless waived by court order. §§ 11.88.100, 11.88.110. No bond required if estate has total assets of less than three thousand dollars.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident may be executor provided he appoints agent for purposes of service of process. § 11.36.010.

Guardian - Nonresident may be guardian provided he appoints a resident agent to receive service of process. § 11.88.020.

REVOCATION: A will is revoked by subsequent written will or physical destruction with intent to revoke. Subsequent marriage of testator revokes will as to former spouse unless expressly provided otherwise. §§ 11.12.040, 11.12.050.

EFFECT OF SUBSEQUENT DIVORCE: Divorce, subsequent to the making of a will, voids all provisions pertaining to the ex-spouse. § 11.12.050.

SPOUSE'S RIGHT OF ELECTION: No statutory provision. One-half of community property descends automatically to surviving spouse under the community property law. (For allowances, see section 11.52.010).

UNIFORM GIFTS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. Minor entitled to complete control of unexpended custodial property upon reaching the age of 18. §§ 11.93.010 to 11.93.920.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not

apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 11.05.010 to 11.05.910.

CHOICE OF LAW: A will executed outside this state is enforceable if executed in compliance with the law of the place of execution or of the testator's domicile. § 11.12.020.

SELF-PROVING PROVISION: No. However, an attesting witness may at the request of testator or interested person make a sworn affidavit stating such facts as would be required by witness in court to prove the will. § 11.20.020.

SMALL ESTATE ADMINISTRATION: Collection of personal property by affidavit is available where the value of the decedent's entire estate subject to probate, not including the surviving spouse's community property interest in any assets which are subject to probate in decedent's estate, wherever located, less liens and encumbrances, does not exceed the amount specified in RCW 6.13.030 (the value of the homestead exemption or \$30,000, whichever is less) § 11.62.010. Washington also provides a favor statute which authorizes credit unions to pay a decedent's moneys on deposit (not to exceed \$1,000) to his or her surviving spouse upon presentation of an affidavit to the effect that the member has died and no personal representative has been appointed. § 11.62.30.

WEST VIRGINIA

STATUTE: W. Va. Code § 41-1-1 et seq.

INTESTATE DESCENT & DISTRIBUTION: The surviving spouse shall be entitled to a dower interest of one-third of all real estate (one-third life estate, not fee). If the decedent leaves surviving children or their decedents, the surviving spouse is entitled to one-third of the personal property. If the decedent leaves no surviving children or their descendants, the surviving spouse inherits all of the real and personal property. §§ 42-1-9, 42-2-1.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 41-1-2.
- (2) Testamentary Capacity - sound mind. § 41-1-2.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 41-1-3.
- (4) Witnesses - 2. § 41-1-3. No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature; and moreover, unless it be wholly in the handwriting of the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, and of each other, but no form of attestation shall be necessary.

INTERESTED WITNESS: Provisions concerning a witness or his spouse are void to the extent they exceed the value of the intestate share of the witness or spouse, unless the will can be proved otherwise. § 41-2-1.

NUNCUPATIVE (ORAL) WILL: Prohibited. See Military Provisions.

HOLOGRAPHIC WILL: Valid if wholly written and signed by the testator. § 41-1-3.

WEST VIRGINIA

MILITARY PROVISIONS: Notwithstanding the two preceding sections (§§ 41-1-3, 41-1-4), a soldier being in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done; and the will of a person domiciled out of this State at the time of his death shall be valid as to his personal property in this State, if it be executed according to the law of the state or country in which he was so domiciled. § 41-1-5.

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required. Will can waive bond for resident executors only. §§ 44-1-7, 44-1-8.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident cannot serve as executor unless the executor is husband, wife, father, mother, brother, sister, child, grandchild or sole beneficiary of the testator, or the testator is a nonresident at the time of his death. § 44-5-3.

Guardian - Same requirements as for executor above.

EFFECT OF SUBSEQUENT DIVORCE: Every will made by a man or woman shall be revoked by his or her marriage, annulment or divorce, except a will which makes provision therein for such contingency, or a will which, though not making provision for such contingency, is made in exercise of a power of appointment, when the estate thereby appointed would not, in default of such appointment, pass to his or her heirs, personal representative, or next of kin: Provided, that even when the estate thereby appointed would, in default of such appointment, pass to his or her heirs, personal representative, or next of kin, such will shall, nevertheless, not be revoked (a) by such marriage if such marriage is between the person appointed in the exercise of such power of appointment and the person exercising such power of appointment, or (b) by such annulment or divorce, unless the person appointed in the exercise of such power of appointment is the person whose marriage to the person exercising such power of appointment was terminated by such annulment or divorce. § 41-1-6.

REVOCATION: A will is revoked by a subsequent will, formal writing, physical destruction with intent to revoke, or subsequent marriage unless the will provides for such contingency. §§ 41-1-6, 41-1-7.

SPOUSE'S RIGHT OF ELECTION: A surviving spouse can elect to take a share consisting of one-third of the realty and personalty. The election must be made within 8 months of the probate of the will. Such renunciation shall be made either in person before the county court by which the will is admitted to probate, or by a writing recorded in the office of the clerk of such court, upon such acknowledgement or proof as would authorize a deed to be admitted to record. §§ 42-3-1, 42-3-2, 43-1-7, 43-1-8.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith, intentional wrongdoing or gross negligence. §§ 36-7-1 to 36-7-24.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 42-5-1 to 42-5-10.

CHOICE OF LAW: A will of a person domiciled out of the state at the time of his death is valid as to his personal estate if it is executed in accordance with the law of his domicile. § 41-1-5.

SELF-PROVING PROVISION: No.

SMALL ESTATE ADMINISTRATION: Summary distribution is available whether the estate is testate or intestate, or the property real or personal, when the estate's assets total \$50,000 or less, exclusive of jointly held property with right of survivorship. § 44-2-1. A favor statute also allows payment of \$1,000 or less by the decedent's employer, the state, local or Federal government, to the surviving spouse, if any, and if none, to such distributees as provided by law. § 44-1-28.

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WISCONSIN

STATUTE: Wis. Stat. Ann. § 852.01 et seq. (West). Wisconsin has promulgated a statutory will, Wis. Stat. Ann. § 853.52 et seq. (see page 4-181).

INTESTATE DESCENT & DISTRIBUTION: If the decedent is survived by one child or surviving issue of a deceased child of the marriage, the surviving spouse takes the first \$25,000, plus one-half of the remaining estate. If decedent is survived by more than one child or issue of deceased children of the marriage, the surviving spouse inherits the first \$25,000, plus one-third of the remainder. If the decedent is survived by a child or issue of a deceased child not of the marriage, the surviving spouse takes one-half of the estate. If there are more than one such child or issue, the survivor takes one-third of the estate. The surviving spouse inherits the entire estate when the decedent leaves no surviving issue. § 852.01.

BASIC WILL REQUIREMENTS:

- (1) Age - 18. § 853.01.
- (2) Testamentary Capacity - sound mind. § 853.01.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 853.03.
- (4) Witnesses - 2. § 853.03.

INTERESTED WITNESS: A will is not invalidated because signed by an interested witness, but unless signed by two disinterested witnesses, any beneficial provisions to that witness are invalid to the extent they exceed the value of intestate share of witness. § 853.07.

NUNCUPATIVE (ORAL) WILL: Prohibited.

HOLOGRAPHIC WILL: Prohibited.

MILITARY PROVISIONS: None.

WISCONSIN

FIDUCIARY BOND REQUIREMENTS:

Executor - Bond required except for banks and trust companies. A direction in a will waiving bond normally will be honored by the court. § 856.25.

Guardian - Bond may be required by the court, but it may be waived if so requested in a will. § 878.01 et seq.

FIDUCIARY RESIDENCY REQUIREMENTS:

Executor - Nonresident cannot serve as executor unless a resident is appointed to accept service of process. Nonresidency may be sufficient cause for nonappointment or removal of an executor in the court's discretion. § 856.23. (In Milwaukee County, a nonresident will not be appointed.)

Guardian - Nonresidency may be sufficient cause for nonappointment or removal of a guardian in the court's discretion.

REVOCATION: A will is revoked by a subsequent will, formal writing, physical destruction with intent to revoke, or subsequent marriage unless the will provides for such contingency. § 853.11(1).

EFFECT OF SUBSEQUENT DIVORCE: Divorce voids all provisions pertaining to the ex-spouse. § 853.11(3).

SPOUSE'S RIGHT OF ELECTION: A surviving spouse is entitled to an elective share of one-third of the net estate. The election must be filed within 6 months of the decedent's death. § 861.05.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for gifts to minors. No bond is required of custodian and custodian not liable for losses of property in absence of bad faith or gross negligence. NOTE: Statute permits inter vivos and testamentary disposition of property. §§ 880.61 to 880.72.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous

death. § 851.55. NOTE: An heir must survive a decedent by at least 72 hours to take an intestate share. § 852.01(2).

CHOICE OF LAW: A written will is valid if executed in accordance with the laws of Wisconsin, or if executed in accordance with the law of the place of execution or the testator's domicile at the time of execution. § 853.05.

SELF-PROVING PROVISION: The use of self-proving provisions rests with the sound discretion of the court. The second sentence of § 856.15(1) provides: "If an uncontested will contains an attestation clause showing compliance with the requirements for execution under § 853.03 or § 853.05, the court may grant probate without any testimony or other evidence."

SMALL ESTATE ADMINISTRATION: Collection of the decedent's solely owned personal property by affidavit is available when the personal estate does not exceed \$5,000. Summary settlement of small estates is available when:

- (1) the estate, less the amount of the debts for which any property is security does not exceed in value the costs, expenses, allowances and claims under § 859.25(1);
- (2) the estate, less the amount of debts for which any property in the estate is security, does not exceed \$10,000 in value and the decedent is survived by a spouse or one or more minor children or both. § 867.01.

When proceedings under § 867.01 are unavailable, but the estate does not exceed \$10,000, summary procedures are available under § 867.02. Once the court is satisfied that use of § 867.02 proceedings are appropriate, it shall order distribution of the property and payment of decedent's debts.

WISCONSIN

WISCONSIN STATUTORY WILLS

§ 853.52. Contents of wills

(1) There are 2 Wisconsin basic statutory wills: the Wisconsin basic will and the Wisconsin basic will with trust.

(2) The Wisconsin basic will includes all of the following:

(a) The contents of the form for the Wisconsin basic will under § 853.55.

(b) The full texts of each of the following:

1. The definitions under § 853.50.

2. The clause under § 853.57.

3. The property disposition clause under § 853.58 adopted by the testator.

4. The mandatory clauses under § 853.60.

(3) The Wisconsin basic will with trust includes all of the following:

(a) The contents of the form for the Wisconsin basic will with trust under § 853.56.

(b) The full texts of each of the following:

1. The definitions under § 853.50.

2. The clause under § 853.57.

3. The property disposition clause under § 853.59 adopted by the testator.

4. The mandatory clauses under §§ 853.60 and 853.61.

(4) Any person who prints forms for the Wisconsin basic will or basic will with trust shall place a signature line on each page of the printed document. A testator shall sign on each such line. Failure to comply with this subsection does not affect the validity of the will.

§ 853.53. Selection of property disposition clause

If more than one property disposition clause is selected or if none is selected, the residuary property of a testator who signs a Wisconsin basic will or basic will with trust shall be distributed to the testator's heirs as if the testator did not make a will.

§ 853.54. Revocation or revision

(1) A Wisconsin basic will or a basic will with trust may be revoked and may be amended in the same manner as other wills.

(2) Any additions to or deletions from the face of the form of the Wisconsin basic will or basic will with trust, other than in accordance with the instructions, shall be ineffective and shall be disregarded.

(3) Notwithstanding sub. (2), any failure to print in the proper places, provide the full name of a person or charity to receive a gift, include residences or use the phrase "not used" where applicable does not affect the validity of a Wisconsin basic will or basic will with trust.

§ 853.55. Wisconsin basic will

The following is the form for the Wisconsin basic will. This notice is to accompany all such wills. The notice is in 12-point bold face type to comply with requirements of the statute.

WISCONSIN

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

2. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

3. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF THE BUSINESS IS UNINCORPORATED.

4. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL. YOU MAY REVOKE THIS WISCONSIN BASIC WILL, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.

5. THE FULL TEXT OF THIS WISCONSIN BASIC WILL, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).

6. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL. EACH WITNESS MUST SIGN HIS OR HER NAME WITH YOU AND THE OTHER WITNESS PRESENT.

7. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

8. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE WISCONSIN BASIC WILL WITH TRUST OR ANOTHER TYPE OF WILL.

11. IF THIS WISCONSIN BASIC WILL DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

WISCONSIN BASIC WILL OF

(Insert Your Name)

Article I. Declaration

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1. PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. GIFT TO PERSONS OR CHARITIES. I make the following gifts to the persons or charities in the cash amount stated in words (. . . . Dollars) and figures (\$) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY

SIGNATURE OF
TESTATOR.

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY.

SIGNATURE OF
TESTATOR.

WISCONSIN

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY.

SIGNATURE OF
TESTATOR.

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY.

SIGNATURE OF
TESTATOR.

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY.

SIGNATURE OF
TESTATOR.

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINE. If I sign on more than one line or if I fail to sign on any line, the property will go under Property Disposition Clause (b) and I realize that means the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

PROPERTY DISPOSITION CLAUSES (Select one.)

- (a) TO MY SPOUSE IF LIVING; IF NOT LIVING,
THEN TO MY CHILDREN AND THE DESCENDANTS
OF ANY DECEASED CHILD BY RIGHT OF
REPRESENTATION.
- (b) TO BE DISTRIBUTED AS IF I DID NOT
HAVE A WILL.

Article 3. Nominations of Personal Representative and Guardian

3.1. PERSONAL REPRESENTATIVE. (Name at least one.)

I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE

SECOND PERSONAL REPRESENTATIVE

THIRD PERSONAL REPRESENTATIVE

3.2. GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child.)

If my spouse dies before I do or if for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

WISCONSIN

3.3. BOND.

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS.

I sign my name to this Wisconsin Basic Will on _____ (date), at _____ (city), _____ (state).

Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses.)

EACH OF US DECLARES THAT THE TESTATOR SIGNED THIS WISCONSIN BASIC WILL IN OUR PRESENCE, ALL OF US BEING PRESENT AT THE SAME TIME, AND WE NOW, AT THE TESTATOR'S REQUEST, IN THE TESTATOR'S PRESENCE AND IN THE PRESENCE OF EACH OTHER, SIGN BELOW AS WITNESSES, DECLARING THAT THE TESTATOR APPEARS TO BE OF SOUND MIND AND UNDER NO UNDUE INFLUENCE.

Signature _____ Residence Address: _____
Print Name _____
Here: _____

Signature _____ Residence Address: _____
Print Name _____
Here: _____

§ 853.56. Wisconsin basic will with trust

The following is the form for the Wisconsin basic will with trust:

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS FORM CONTAINS A TRUST FOR YOUR FAMILY. IF YOU DO NOT WANT TO CREATE A TRUST, DO NOT USE THIS FORM.
2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.
3. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.
4. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF THE BUSINESS IS UNINCORPORATED.
5. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL WITH TRUST. YOU MAY REVOKE THIS WISCONSIN BASIC WILL WITH TRUST, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.
6. THE FULL TEXT OF THIS WISCONSIN BASIC WILL WITH TRUST, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).
7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL. EACH WITNESS MUST SIGN HIS OR HER NAME WITH YOU AND THE OTHER WITNESS PRESENT.
8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

WISCONSIN

9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

11. IF THIS WISCONSIN BASIC WILL WITH TRUST DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

WISCONSIN BASIC WILL WITH TRUST OF

(Insert Your Name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1. PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. GIFT TO PERSONS OR CHARITIES. I make the following gifts to the persons or charities in the cash amount stated in words (. . . . Dollars) and figures (\$. . . .) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY

SIGNATURE OF
TESTATOR.

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY

SIGNATURE OF
TESTATOR.

WISCONSIN

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY

SIGNATURE OF
TESTATOR.

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY

SIGNATURE OF
TESTATOR.

FULL NAME OF PERSON
OR CHARITY TO RE-
CEIVE GIFT. (Name
only one. Please
print.)

AMOUNT OF CASH
GIFT OR DESCRIPTION
OF PROPERTY

SIGNATURE OF
TESTATOR.

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINE. If I sign on more than one line or if I fail to sign on any line, the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

IF YOU HAVE A SUBSTANTIAL ESTATE, CHOOSING CLAUSE (a) OR (b) MIGHT NOT BE THE MOST ADVANTAGEOUS TAX OPTION AVAILABLE TO YOU. If you have questions concerning the tax implications of these clauses, you should consult a competent tax advisor.

PROPERTY DISPOSITION CLAUSES (Select one.)

- (a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.
(IF YOU CHOOSE THIS CLAUSE AND YOU DO NOT WANT 21 YEARS OF AGE TO APPLY, PRINT A DIFFERENT AGE, 18 OR ABOVE, AND SIGN ON THIS LINE.) _____
- (b) TO MY SPOUSE AND CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING SPOUSE AND NO LIVING CHILD UNDER 21 YEARS OF AGE.
(IF YOU CHOOSE THIS CLAUSE AND YOU DO NOT WANT 21 YEARS OF AGE TO APPLY, PRINT A DIFFERENT AGE, 18 OR ABOVE, AND SIGN ON THIS LINE.)
AGE _____ SIGNATURE _____

Article 3. Nominations of Personal Representative, Trustee and Guardian

3.1. PERSONAL REPRESENTATIVE. (Name at least one.)

I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE

SECOND PERSONAL REPRESENTATIVE

WISCONSIN

THIRD PERSONAL REPRESENTATIVE

3.2. TRUSTEE. (Name at least one.)

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph to serve as trustee of that trust. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST TRUSTEE

SECOND TRUSTEE

THIRD TRUSTEE

3.3. GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child.)

If my spouse dies before me or for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

3.4. BOND

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative, trustee or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS.

I sign my name to this Wisconsin Basic Will With Trust on _____ (date), at _____ (city), _____ (state).

Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses.)

EACH OF US DECLARES THAT THE TESTATOR SIGNED THIS WISCONSIN BASIC WILL WITH TRUST IN OUR PRESENCE, ALL OF US BEING PRESENT AT THE SAME TIME, AND WE NOW, AT THE TESTATOR'S REQUEST, IN THE TESTATOR'S PRESENCE AND IN THE PRESENCE OF EACH OTHER, SIGN BELOW AS WITNESSES, DECLARING THAT THE TESTATOR APPEARS TO BE OF SOUND MIND AND UNDER NO UNDUE INFLUENCE.

Signature _____ Residence Address: _____
Print Name _____
Here: _____

Signature _____ Residence Address: _____
Print Name _____
Here: _____

§ 853.57. Personal, recreational and household items`

The following are the full text of paragraph 2.1 of the Wisconsin basic will and the basic will with trust:

WISCONSIN

If my spouse survives me, I give my spouse all my books, jewelry, clothing, personal automobiles, recreational equipment, household furnishings and effects, and other tangible articles of a household, recreational or personal use, together with all policies of insurance insuring any such items. If my spouse does not survive me, the personal representative shall distribute those items among my children who survive me, and shall distribute those items in as nearly equal shares as feasible in the personal representative's discretion. If none of my children survive me, the items described in this paragraph shall become part of the residuary estate.

§ 853.58. Residuary estate; basic will

The following is the full text of the property disposition clauses referred to in paragraph 2.3 of the Wisconsin basic will:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION.

If my spouse survives me, then I give all my residuary estate to my spouse. If my spouse does not survive me, then I give all my residuary estate to my descendants by right of representation who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

(b) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL:

The personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

§ 853.59. Residuary estate; basic will with trust

The following is the full text of the property disposition clauses referred to in paragraph 2.3 of the Wisconsin basic will with trust, except that if a different age is specified by the testator in the Wisconsin basic will with trust, that specified age is substituted for 21 years in this section:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(1) If my spouse survives me, then I give all my residuary estate to my spouse.

(2) If my spouse does not survive me and if any child of mine under 21 years of age survives me, then I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) by right of representation of any age as much, or all, of the principal or net income of the trust, or both, as the trustee deems necessary for their health, support, maintenance, and education of my descendants. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational and other studies after high school, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

WISCONSIN

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants by right of representation who are then living. If principal becomes distributable to a person under legal disability, the trustee may postpone the distribution until the disability is removed. In that case, the assets shall be administered as a separate trust under this Wisconsin basic will with trust and the net income and principal shall be applied for the benefit of the beneficiary at such times and in such amounts as the trustee considers appropriate. If the beneficiary dies before the removal of the disability, the remaining assets shall be distributed to his or her estate.

(3) If my spouse does not survive me and if no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(1) I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) by right of representation of any age as much or all, of the principal or net income of the trust or both as the trustee deems necessary for their health, support, maintenance, and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, vocational other studies after high school, and reasonably related living expenses. The welfare of my spouse is the primary consideration regarding distributions. Consistent with the trustee's fiduciary

duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account the beneficiaries' other income, outside resources or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are then living. If principal becomes distributable to a person under legal disability, the trustee may postpone the distribution until the disability is removed. In that case, the assets shall be administered as a separate trust under this Wisconsin basic will with trust and the net income and principal shall be applied for the benefit of the beneficiary at such times and in such amounts as the trustee considers appropriate. If the beneficiary dies before the removal of the disability, the remaining assets shall be distributed to his or her estate.

(2) If no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

§ 853.60. Mandatory clauses

The Wisconsin basic will and basic will with trust include the following mandatory clauses:

(1) **Intestate disposition.** If the testator has not made an effective disposition of the residuary estate, the personal representative shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the state of Wisconsin in effect on the date of the testator's death.

WISCONSIN

(2) Powers of personal representative. (a) In addition to any powers conferred upon personal representatives by law, the personal representative may do any of the following:

1. Sell estate assets at public or private sale, for cash or on credit terms.

2. Lease estate assets without restriction as to duration.

3. Invest any surplus moneys of the estate in real or personal property, as the personal representative deems advisable.

(b) The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to any of the following:

1. The guardian of the minor's person or estate.

2. Any adult person with whom the minor resides and who has the care, custody, or control of the minor.

3. A custodian, serving on behalf of the minor under the uniform gifts to minors act of any state.

(c) On any distribution of assets from the estate, the personal representative may partition, allot, and distribute the assets in kind, including undivided interests in an asset or in any part of it; partly in cash and partly in kind; or entirely in cash. If a distribution is being made to more than one beneficiary, the personal representative may distribute assets among them on a prorated or nonprorated basis, with the assets valued as of the date of distribution.

(3) Powers of guardian. A guardian of the person or of the estate nominated in the Wisconsin basic will or basic will with trust, and subsequently appointed, shall have all of the powers conferred by law.

§ 853.61. Mandatory clauses; basic will with trust

The Wisconsin basic will with trust includes the following mandatory clauses:

(1) **Ineffective disposition.** If, at the termination of any trust created in the Wisconsin basic will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the state of Wisconsin then in effect.

(2) **Powers of trustee.** (a) In addition to any powers conferred upon trustees by law, the trustee shall have all the powers listed in § 701.16.

(b) In addition to the powers granted in para. (a), the trustee may:

1. Hire and pay from the trust the fees of investment advisors, accountants, tax advisors, agents, attorneys, and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

2. On any distribution of assets from the trust, the trustee may partition, allot, and distribute the assets in kind, including undivided interests in an asset or in any part of it; partly in cash and partly in kind; or entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a prorated or nonprorated basis, with the assets valued as of the date of distribution.

3. The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the uniform gifts to minors act of any state. The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with this section.

(3) **Trust administrative provisions.** The following provisions shall apply to any trust created by a Wisconsin basic will with trust:

(a) The interests of trust beneficiaries are not transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy, or

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other legal process to the fullest extent permissible by law.

(b) The trustee is entitled to reasonable compensation for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(c) All persons who have any interest in a trust under a Wisconsin basic will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the Wisconsin basic will with trust.

853.62. Date of execution of will

Except as specifically provided in §§ 853.50 to 853.61, a Wisconsin basic will or basic will with trust includes only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the will is executed.

WYOMING

STATUTE: Wyo. Stat. § 2-1-101 et seq.

INTESTATE DESCENT & DISTRIBUTION: If decedent leaves a spouse and child, or descendants of any children surviving, one-half of estate descends to spouse and the residue to children and their descendants. If decedent leaves a spouse and no child nor descendants of any child, then all of the property passes to the surviving spouse. In all other cases not covered by the above: (1) to the surviving children or their descendants (descendants take the share of the deceased child) in equal shares; (2) if no children or descendants of children, then to parents and siblings of the decedent (or their descendants) in equal shares; (3) if neither (1) nor (2) apply, then to grandparents, uncles, aunts, or their descendants in equal shares. § 2-4-101.

EXEMPT PROPERTY: Notwithstanding provisions of a will or in the event a person dies intestate, the surviving spouse and/or minor children are entitled to the first \$30,000.00 (in property or cash) of a decedent's estate. This amount is exempt from all debts except costs of administration and funeral expenses. W.S. §§ 2-7-504, 2-7-508.

BASIC WILL REQUIREMENTS:

- (1) Age - 19. § 2-6-101.
- (2) Testamentary Capacity - sound mind. § 2-6-101.
- (3) Signature - testator's signature or signed by someone under testator's direction and in his presence. § 2-6-112.
- (4) Witnesses - 2. § 2-6-112.

INTERESTED WITNESS: No witness can benefit from will unless there are two other disinterested witnesses, but if the witness would be entitled to any portion of the estate through intestacy, he may receive the portion to the extent of amount devised. § 2-6-112.

NUNCUPATIVE (ORAL) WILL: Prohibited.

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HOLOGRAPHIC WILL: Valid if entirely written and signed by the testator himself. § 2-6-113. Tape recordings are not valid for purposes of passing property.

MILITARY PROVISIONS: None.

FIDUCIARY BOND REQUIREMENTS:

Personal Representative - Bond required unless waived by terms of will or if all distributees waive requirement in writing. §§ 2-3-102, 2-3-111. Court may require bond despite will provisions for good cause (i.e., nonresident personal representative).

Guardian - Bond may be required by the court or by terms of will. § 3-1-106.

FIDUCIARY RESIDENCY REQUIREMENTS:

Personal Representative - Nonresident may be a personal representative, but must appoint agent for purpose of service of process. § 2-4-203.

Guardian - May be a nonresident; court may appoint a resident guardian to act jointly with nonresident. § 3-3-401.

REVOCATION: A will is revoked by subsequent will, either expressly or by inconsistency, or by physical destruction with intent to revoke. § 2-6-117.

EFFECT OF SUBSEQUENT DIVORCE: Divorce or annulment voids all provisions pertaining to ex-spouse. § 2-6-118. Court ordered or contractual operations will not void will provisions.

SPOUSE'S RIGHT OF ELECTION: Surviving spouse may take an elective share equal to one-half of estate if decedent is not survived by issue, or if surviving spouse is also a parent of any surviving issue. Share equals one-fourth, if surviving spouse is not the parent of any surviving issue. Election must be made within 3 months after submission of will to probate or within 30 days after being advised of the right of election, whichever is longer. For purposes of the spouse's right of election "estate" means property remaining after deducting certain expenses, as well as the exempt

property, homestead, and family allowance. § 2-5-101 to § 2-5-105.

UNIFORM TRANSFERS TO MINORS ACT: Statutory method for transfers of property to persons under the age of 21. 34-13-114 to 34-13-137. Transfers may be made in a will, trust, power of appointment, or contract. 34-13-116. Transfers for property must be in writing. 34-13-122(b). Standard of care to be exercised by custodian is that of a prudent person dealing with another's property. If a custodian has special skills or is named based on representations of special skills, the custodian is under a duty to use those skills. 34-13-125. A minor on reaching the age of 14 may petition the Court to require the property to be applied for his use and benefit, to have the custodian removed for cause or to require a bond, and for an accounting. 34-13-131 and 132.

UNIFORM SIMULTANEOUS DEATH ACT: Where evidence is insufficient to determine that a beneficiary survived the testator, the property of the testator is disposed of as if testator had survived. This chapter shall not apply when testator expressly provides in the will for devolution of his property in the event of simultaneous death. §§ 2-13-101 through 2-13-107.

CHOICE OF LAW: A written will is valid if executed in compliance with the law at the time of execution of the place of execution, or with the law of the place where at the time of execution or time of death the testator is domiciled, or is a national. § 2-6-116.

SMALL ESTATES: There is no need for a formal probate when the probate estate is less than \$30,000.00, even if a will was executed by the decedent. The property of the decedent can be transferred by affidavit or by an order of distribution. This applies to both real and personal property.

SELF-PROVING PROVISION: Yes. For form, see next page.

LISTS OF PERSONAL PROPERTY/DOCTRINE OF INDEPENDENT SIGNIFICANCE: Effective 22 May 1987, individuals may prepare a list or written statement disposing of tangible personal property not otherwise disposed of in the will. To be effective it must:

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1. Be dated,
2. Be either in the handwriting of the testator or signed by him, and,
3. Include a description of the items and persons to receive the property.

The list may be prepared before or after the execution of the will. It may also be altered if the above requirements are met.

The list may not dispose of money, debts, documents of title, securities or property used in a trade or business. § 2-6-124.

Wyoming Self-Proving Clause

I, _____, the testator, sign my name to this instrument this ____ day of _____, 19____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am an adult person, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that he executes it as his free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the testator, hereby signs this will as witnesses to the testator's signature and that to the best of our knowledge the testator is an adult person, of sound mind, and under no constraint or undue influence.

Witness

Witness

WYOMING

STATE OF WYOMING)
)
COUNTY OF _____) ss

Subscribed, sworn to and acknowledged before me by
_____, the testator, and subscribed and sworn
to before me by _____, and _____,
witnesses, this _____ day of _____.

(SEAL)

(Signed)

(Official capacity of
officer)

Source:
Wyo. Stat. § 2-6-114.

CHAPTER 5

LIVING WILLS

Medical treatment facilities and health care providers can now prolong lives through the use of emergency resuscitation, respirators, dialysis, artificial hydration and nutrition, and other methods of life support. While medical care is available to sustain life, however, the prognosis for recovery is often hopeless and in many instances patients endure pain and suffering.

In the early 1970s, scholars, clergy, politicians, and lawyers began debating the difficult issue of one's right to choose death when faced with a terminal condition. Since 1976, forty states and the District of Columbia have enacted living wills statutes.¹ Several

¹ Alabama Natural Death Act (1981), Ala. Code §§ 22-8A- to 10 (1984); Alaska Rights of Terminally Ill Act (1986), Alaska Stat. §§ 18.12.010 -.100 (Supp. 1986); Arizona Medical Treatment Decision Act (1985), Ariz. Rev. Stat. Ann. §§ 36-3201 - 3210 (1986); Arkansas Rights of the Terminally Ill of Permanently Unconscious Act (1987), Ark. Stat. Ann. §§ 20-17-201 to 218 (Supp. 1987); California Natural Death Act (1976), Ca. Health & Safety Code §§ 7185-7195 (Supp. 1987); Colorado Medical Treatment Decision Act, Colo. Rev. Stat. §§ 15-18-101 to 113 (Supp. 1986); Connecticut Removal of Life Support Systems Act (1985), Conn. Gen. Stat. §§ 19a-570 to 575 (1987); Delaware Death With Dignity Act, Del. Code Ann. tit. 16, §§ 2501-2509 (1983); District of Columbia Natural Death Act of 1981 (1982), D.C. Code Ann. 6-2421 to 2430 (Supp. 1986); Florida Life-Prolonging Procedure Act (1984), Fla. Stat. Ann. §§ 765.01 to .15 (1986); Georgia Living Wills Act (1984, 1986, 1987), Ga. Code Ann. §§ 31-32-1 to 12 (1985 & Supp. 1986), amended 1987 Ga. Laws 488; Hawaii Medical Treatment Decisions Act (1986), Hawaii Rev. Stat. §§ 327D-1 to 27 (Supp. 1986); Idaho Natural Death Act (1977, 1986, 1988), Idaho Code §§ 39-4501 to 4508 (1985 & Supp. 1986); Illinois Living Will Act (1984, 1988), Ill. Ann. Stat. ch. 110 1/2 §§ 701-10 (Smith-Hurd Supp. 1988); Indiana Living Wills and Life-Prolonging Procedures Act (1985), Ind. Code Ann. §§ 16-8-11-1 to 17 (Burns Supp. 1986); Iowa Life-Sustaining Procedures Act (1985, 1987), Iowa Code Ann. §§ 144A.1 to 11 (West Supp. 1986); Kansas Natural Death Act (1979), Kan. Stat. Ann. §§ 65-28,101 to 28,109 (1985); Louisiana Life-Sustaining Procedures Act (1984, 1985), La. Rev. Stat. Ann. §§ 40:1299.58.1 to .10 (West Supp. 1987); Maine Living Wills Act (1985), Me. Rev. Stat. Ann. tit. 22, 2921-2931 (Supp. 1986); Maryland Life Sustaining Procedures Act (1985-1986), Md. Health-General Code Ann. §§ 5-601 to 614 (Supp. 1986); Minnesota Adult Health Care Decisions Act (1989), Sen. Bill 28, signed into law March, 3, 1989, Mississippi

additional states are considering living will legislation² and a uniform act in the area has been proposed.³ Moreover, courts in some states have upheld the use of living wills in the absence of specific statutory authority.⁴

A "living will" statute typically permits an adult to sign a document authorizing or mandating the withholding or withdrawal of specified medical treatment in the event of catastrophic illness. The document often states the signer's desire to be allowed to die a natural

Withdrawal of Life-Saving Mechanisms Act (1984), Miss. Code Ann. 41-41-101 to 121 (Supp. 1986); Missouri Life Support Declarations Act (1985), Mo. Ann. Stat. §§ 459.010 to .055 (Vernon Supp. 1987); Montana Living Will Act (1985), Mont. Code Ann. §§ 50-9-101 to 104 (1985); Nevada Withholding or Withdrawal of Life Sustaining Procedures Act (1977), Nev. Rev. Stat. §§ 449.540 to .690 n(1986); New Hampshire Terminal Care Document Act (1985), N.H. Rev. Stat. Ann. §§ 137-H:1 to H:16 (1986); New Mexico Right To Die Act (1977, 1984), N.M. Stat. Ann. §§ 24-7 to 11 (1986); North Carolina Right To Natural Death Act (1977, 1979, 1981, 1983), N.C. Gen. Stat. Ann. §§ 90-320 to 322 (1985); Oklahoma Natural Death Act (1985), Okla. Stat. Ann. tit. 63 §§ 3101 to 3111 (West Supp. 1987); Oregon Rights With Respect To Terminal Illness Act (1977, 1983), Or. Rev. Stat. §§ 97.050 to .090 (1985); South Carolina Death With Dignity Act (1986, 1988), S.C. Code Ann. §§ 44-77-10 to -160 (Law. Co-op Supp. 1986); Tennessee Right to Natural Death Act (1985), Tenn. Code Ann. §§ 32-11-101 to 110 (Supp. 1986); Texas Natural Death Act (1977, 1979, 1983, 1985) Tex. Rev. Civ. Stat. Ann. art. 4590h (Vernon Supp. 1987); Utah Personal Choice and Living Will Act (1985), Utah Code Ann. §§ 75-2-1101 to 1118 (Supp. 1986); Vermont Terminal Care Document Act (1982), Vt. Stat. Ann. tit. 18, §§ 5251 to 5262 and tit. 13, § 1801 (1985); Virginia Natural Death Act (1983), Va. Code §§ 54-325.8: to :13 (Supp. 1986); Washington Natural Death Act (1979), Wash. Rev. Code Ann. §§ 70.122.010 to .905 (Supp. 1987); West Virginia Natural Death Act (1984), W. Va. Code §§ 16-30-1 to 10 (1985); Wisconsin Natural Death Act (1984, 1986), Wisc. Stat. Ann. §§ 154.01 to .15 (West Supp. 1986); Wyoming Act (1984, 1987), Wyo. Stat. §§ 35-22-101 to 109 (Supp. 1987).

² Massachusetts, Michigan, Nebraska, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, and South Dakota are all considering proposed legislation.

³ The Uniform Rights of the Terminally Ill Act, §§ 1-18, 9B U.L.A. 609 (1987), amended 9B U.L.A. 21 (Supp. 1988).

⁴ See, e.g., *John F. Kennedy Hosp. v. Bludworth*, 452 So.2d 921 (Fla. 1984); *In re Conroy*, 98 N.J. 321, 486 A.2d 1209 (1985); *In re Storar*, 52 N.Y. 2d 363, 438 N.Y.S.2d 64 (1982).

death and not be kept alive by medicines, heroic measures, or artificial means. All state statutes require the patient's physical condition or prognosis to be "terminal" or reach a state of deterioration sufficient to trigger the statutory authorization. This requirement protects the state's interests in preserving life, preventing suicide, and protecting the integrity of the medical profession.

Although there are basic similarities in living will statutes, fundamental differences do exist. The most important difference is whether the terminal status determination must be made without regard to the effect of life supporting treatments. In almost one-half of the states, a patient must be in a condition where death will occur shortly irrespective of the effect of life supporting treatment. Other differences involve the timing of death for purposes of defining a terminally ill patient and in the definitions of the required conditions authorizing use of the document.

Although living will statutes vary from state to state, they typically provide that a competent adult may express in writing his or her wishes concerning whether life-sustaining treatment should be provided or withheld if they are no longer able to make treatment decisions.⁵ In most states, living wills may only be used to refuse extraordinary, life-prolonging care. Moreover, living wills are effective only to refuse care after a patient has become terminally ill or is in a persistent vegetative state.⁶

Most living will statutes provide a suggested form for the declaration which, in most states, may be changed by the maker. These declarations have an unlimited duration, unless revoked, in every state except California.⁷ Nevertheless, these documents should be reviewed periodically to ensure they are consistent with law in this fast developing area.

⁵ A comprehensive article discussing the differences in state living will statutes is Gelfand, Living Will Statutes: The First Decade, 5 Wis. Law. Rev. 737 (1987).

⁶ A recent article addressing the types of care that may be withheld in the various states and when the documents are effective to refuse care is Francis, The Evanescence of Living Wills, 24 Real Property, Probate and Trust Journal 141 (1989).

⁷ Handbook of Living Laws, Society for the Right to Die, p. 15 (1987).

The living will statutes of 11 states⁸ provide a hierarchy of surrogate decisionmakers if no living will has been executed. In addition, 13 states⁹ allow competent adults to name proxy decisionmakers in the living will. Seven states have passed durable power of attorney statutes that specifically authorize individuals to appoint agents to make health care decisions for them.¹⁰ Clients executing durable powers of attorney for health care should consider naming an agent who is not a beneficiary under a will or an intestate heir.

All of the living will statutes provide that the declaration be witnessed by at least two persons. Generally, the statutes require that the witnesses be unrelated to the patient, and not be an employee of the attending physician or health care facility in which the person is a patient. The statutes also typically exclude persons expected to inherit. Legal assistance attorneys supervising the execution of living wills should ensure that two neutral persons, unrelated to the patient, and not involved in providing health care to the patient witness the declaration.

Most statutes require that the patient's declaration be in writing, but several do allow oral declarations to be made to physicians or third parties. If the patient is unable to sign a written document, statutes in one-half of the states provide that another person may sign.

To preclude medical error, a safeguard found in almost all living will statutes is the provision requiring one or more physician certify the terminal condition of the patient in writing. This requirement, however, has not been included in the Uniform Act.

⁸ Arkansas, Connecticut, Florida, Iowa, Louisiana, New Mexico, North Carolina, Oregon, Texas, Utah, and Virginia.

⁹ Arkansas, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Louisiana, Texas, Utah, Virginia, and Wyoming.

¹⁰ Cal. Civ. Code §§ 2410-2444 (West Supp. 1988); Idaho Code § 39-4505 (Supp. 1988); Illinois Ann. Stat. ch. 110, § 801-1 to 12 (Smith Hurd Supp. 1988); Nev. Rev. Stat. §§ 449.800 to .860 (1987); R.I. Gen. Laws §§ 23-4.10-1 to -2 (Supp. 1988); Utah Code Ann. § 75-2-1106 (Supp. 1988); Vt. Stat. Ann. tit 14, §§ 3451-3467 (Supp. 1988). California and Rhode Island's statutes require the use of a specified document form. The durable power of attorney laws in Colorado, North Carolina, and Pennsylvania do not clearly specify whether an agent may be given power to refuse medical treatment.

California is the only state requiring periodic review of living wills (every five years). In all other states, a living will executed by a 20 year old soldier today will be effective fifty years from now when he is 70. Legal assistance attorneys should advise all declarants to periodically review their living wills to ensure that no document remains in effect by oversight.

Most states permit a patient to revoke a living will even if the patient is mentally incompetent. Only Mississippi requires that a patient be competent to revoke a living will.

A typical feature of most living will statutes is statutory protection for those who carry out the wishes of a patient. To qualify for the immunity, physicians and other individuals must act in good faith and have no knowledge of defects in the instrument.

Several states, including California, Georgia, Idaho, North Carolina and Oregon require living wills to be in a particular format. Of these states, North Carolina is the least accommodating to other state forms. North Carolina requires living wills to be "proved" before a clerk of court and will enforce a living will from another state only if it is in the form provided by the North Carolina Act.

Most states' laws contain a declaration form but do not specify that the form must be followed precisely. These states and states that do not proscribe a particular statutory format at all should honor living wills executed in other states. The states without living will statutes, however, will not likely honor living wills executed elsewhere.

It is important to recognize that the Army medical treatment facilities will not follow any particular state law when determining whether to honor a living will. Rather, Army health care providers will follow the provisions of Army Regulation 40-3, Chapter 19.

Army Regulation 40-3 distinguishes between Do Not Resuscitate (DNR) Orders and Withdrawal of Life Sustaining Treatment (WLS) Orders. A DNR order is an order to suspend the otherwise automatic initiation of cardiopulmonary resuscitation (CPR). These orders are appropriate only for irreversible, terminally ill patients or those in a persistent or chronic vegetative state.

The voluntary decision of a competent and informed patient will determine whether a DNR order is issued. No particular form or format for communicating this decision to Army health care providers is prescribed. Indeed, there is no requirement for the decision to be issued in writing.

The decisions made by a patient regarding DNR Orders when competent will normally be honored after the patient becomes incompetent. If the patient has not made a decision regarding DNR orders while competent, the patient's next of kin or legal guardian is the decision maker.

The Army procedure regarding WLST orders is slightly different. The underlying policy is to sustain life when it is reasonable to do so. A WLST order is appropriate, however, for patients with a "terminal condition" or a "persistent vegetative state." Either one of these diagnosis must be made by at least two physicians.

Health care providers will consult with a competent patient regarding the decision to issue a WLST order. If the patient is incompetent, the decision to issue a WLST order will be made on the basis of the patient's best interest. In making this determination, Army health care providers will give considerable deference to directions made in a living will signed by the patient when competent. If no living will exists, the determination to issue a WLST Order for an incompetent patient will be made in consultation with the patient's next of kin or guardian.

The important thing for legal assistance attorneys to understand is that a living will need not be in any particular form for it to be considered by military health care providers. Virtually any writing signed by client and preferably, witnessed by two adults, will be effective as long as the patient is being treated in an Army medical facility. Sample forms that could be used for this purpose have been included in this Guide at Appendix I. Another form of the living will published and distributed by Concern for the Dying, 250 West 57th Street, New York, New York 10019 is also at Appendix I. Clients anticipating extended treatment at a private health care facility should execute living wills that conform to the law of state in which the facility is located.

An issue that has not yet been resolved is whether living wills prepared using one state's form will be honored by health care practitioners in another state.

Currently, living will laws in only six states¹¹ address the issue and provide some recognition for living wills executed out of state. Nevertheless, this may not be a significant problem for patients being treated in Army medical treatment facilities because Army regulations require medical officials to consider the health care desires of competent patients.¹² Living wills declarations conforming to a particular state law should be considered as evidence of a patient's desires by military health care providers and followed as long as the withdrawal of treatment is not otherwise consistent with Army policy.

A major source of controversy in the right to die area has been the subject of withholding or withdrawing artificial feeding from terminally ill or permanently unconscious patients. The debate in this area has been conducted not only in the courtroom, but in the state legislatures as well. Twenty four states address the issue in some way. In thirteen states¹³, the administration of medication or the performance of any medical procedure deemed necessary for the comfort and care of the patient may not be withheld or withdrawn. Courts in these states could construe the phrase "necessary to provide comfort and care" narrowly so as to be construed to allow patients the right to forego sustenance which is not necessary for comfort.

Seven states¹⁴ specifically state that provision of artificial nutrition and hydration is not a procedure that may be rejected by a patient. On the other hand, 4 states¹⁵ provide that artificial feeding not needed for comfort may be withheld, and the Alaska declaration form gives individuals the option of rejecting or requesting

¹¹ Alaska, Arkansas, Hawaii, Maine, Maryland, and Montana.

¹² Army Reg. 40-3, Medical Services: Medical, Dental, and Veterinary Care, chap. 19 (15 Feb. 1985) [hereinafter AR 40-3]. An excellent article setting forth Army policy regarding withdrawal of life sustaining treatment is Woodruff, Letting Life Run Its Course: Do-Not-Resuscitate Orders and Withdrawal of Life-Sustaining Treatment, The Army Lawyer, April 1989 at 6.

¹³ Arizona, Maryland, New Hampshire, Oklahoma, South Carolina, Utah, West Virginia, and Wyoming.

¹⁴ Colorado, Connecticut, Georgia, Idaho, Maine, Missouri, and Wisconsin.

¹⁵ Alaska, Arkansas, Montana, and Tennessee.

artificial feeding and hydration.

The lack of precision concerning artificial feeding and hydration in many of the living will statutes has led to inconsistent interpretation in the courts and a concomitant inability to accurately predict how declarations in this area will be treated. Nevertheless, legal assistance attorneys should encourage clients to include their wishes with regard to artificial feeding and hydration in their living wills.

The ultimate question for those executing living wills is whether they will be honored by health care providers. The overriding philosophy of almost all living wills statutes is that a competent patient's wishes must be followed. Under most states' laws, if a physician objects to withholding treatment, the patient must be transferred to another physician who will comply with the declaration.¹⁶ The statutes generally contain provisions for obtaining damages or assessing penalties against a physician who improperly refuses to transfer a patient.

There are several steps attorneys can take to increase the effectiveness of their living wills. The safest, but by no means guaranteed, way to avoid enforcement problems is to use the prescribed statutory forms for clients who reside in states having living wills legislation.¹⁷ If these forms are altered, use clear language to define what treatment is to be withheld or withdrawn and to specify exactly when this should be done.

Living wills should be signed in the presence of two witnesses who are not relatives or beneficiaries. Living

¹⁶ Thirty-three states provide some requirement for transferring the patient. The statutes differ in whether the physician must transfer or must merely make every reasonable effort to transfer the patient. For a discussion of the various approaches in this area, see Gelfand, Living Will Statutes: The First Decade, 5 Wis. Law Rev. 737, 768 (1987).

¹⁷ Declaration forms that specifically comply with the state statutes, and a Living Will Declaration form offered to residents of states lacking living will legislation are available from The Society for the Right to Die, 250 West 57th Street, New York, NY 10107. This organization also publishes a Handbook of Living Wills Laws, available for \$8.00. A copy of this Handbook will be forwarded to Army legal assistance offices in an upcoming TJAGSA mailout.

wills that bear recent dates will also be likely to carry more weight with health care providers and judges. Finally, clients may also increase the authority of their documents by reviewing them with doctors and hospital officials prior to accepting care or treatment.

Attorneys should advise clients to keep their living wills with other important papers but not in a safe deposit box. A copy of the living will should be given to members of the client's family and personal physician. Moreover, clients should discuss the contents of their living wills and general health care desires with their family and doctors and consider choosing a third party as an agent to represent their interests in the event they are not competent at the time these important decisions will have to be made.

The living wills movement reflects a growing recognition of the right to privacy and freedom of choice in making health care decisions. Legal assistance attorneys will undoubtedly be called upon more and more to help clients effectively implement these rights.

Another document legal assistance attorneys should consider preparing for clients who have firm health care wishes is the durable power of attorney. Although every state now has legislation authorizing durable powers of attorney, very few expressly provide for delegating health care powers to an agent. The trend appeared to be toward recognizing the validity of these powers of attorney for this purpose.

Practitioners must exercise great care in drafting durable powers of attorney for health care purposes. The need for precise terminology in these powers of attorney is critical, particularly when defining when withdrawal of life support systems should take place. Drafters should also clearly address whether the client desires to discontinue nourishment and hydration when in an irreversible state. It is also advisable to include an exculpatory clause in the power of attorney, immunizing the agent and medical person who rely on the power.

The effectiveness of durable powers of attorney for health care is largely an unsettled issue in most states. A sample form has been included in this Guide at Appendix H. Legal assistance attorneys using this form should inform clients that the instrument may not be effective in the state in which they might be treated. Even if it is not entirely valid, medical personnel should give the document some weight as an expression of the client's intent regarding these areas of medical treatment.

CHAPTER 6

MAKING ANATOMICAL GIFTS

One area of estate planning that is frequently overlooked by legal assistance attorneys is helping clients make anatomical gifts. An attorney can render a great service not only to the client but also to medical patients needing body tissue or organ transplants by discussing this topic during estate planning interviews and preparing appropriate forms to execute the gift.

The transplantation of body parts including skin grafts, bones, blood, corneas, kidneys, livers, arteries, and hearts is a rapidly expanding branch of medical technology. While advances in medical science have made even complex transplants possible, there are never enough organs available to meet the demand.

In light of this ever present need, the Department of Defense (DOD) policy is to encourage organ and tissue donation and coordinate donors with needy recipients.¹ Under present DOD directive donors interested in making an organ or tissue gift should comply with the law of the state where the gift is being made.² Clients residing overseas should make the gift in accordance with Uniform Anatomical Gift Act unless host nation law requires otherwise.³

The task of making anatomical gifts has been simplified by the fact that all 50 states, the District of Columbia, and the Virgin Islands have enacted the Uniform Anatomical Gift Act (UAGA).⁴ The UAGA provides

¹Dep't of Defense Directive 6465.3, Organ and Tissue Donation (Aug. 14, 1987) [hereinafter DOD Dir. 6465.3]. The Army Organ Transplant Program has been established to implement DOD policy. See Army Reg. 40-3, Medical Services: Medical, Dental, and Veterinary Care, para. 18-1 (15 Feb. 1985).

²DOD Dir. 6465.3, para. F1.

³DOD Dir. 6465.3, para. F1.

⁴Unif. Anatomical Gift Act §1, 8A U.L.A. 30 (1987). The Uniform Anatomical Gift Act was enacted in 1968 and amended in 1987. Thus far three states, California (West's Ann. Cal. Health & Safety Code, §§ 7150 to 7158), Connecticut (C.G.S.A. §§ 19a-271 to 19a-280), and Hawaii (HRS §§ 327-1 to 327-9), have repealed the 1968 version of the Act in lieu of the 1987 amended version. The focus of this note will be on the 1968 version.

that any person over age eighteen may donate his or her body or any part to any hospital, physician, medical school, organ transplant bank, or particular individual.⁵

The Act specifies several alternative forms for executing an anatomical gift. One method is by a statement in a will, and such a gift is valid even before the will is submitted for probate and even if the dispositive portions of the will are ruled invalid.⁶ Because wills are often not located until well after a person's death, however, it is advisable to make anatomical gifts in a separate document or card. No special form is required to make a valid gift, but the donor should sign the document in the presence of at least two witnesses.⁷ Delivery of the document to the intended recipient is not necessary.⁸

The most effective method for making an anatomical gift is to execute a small card that is carried on the person. Many states now issue anatomical gift card forms as part of drivers' licenses. A sample form for making an anatomical gift has been included in Appendix F.

A donor may designate in the will, card, or other document what body parts or organs are donated.⁹ The donor may also specify a recipient and include special procedures or requests.

An anatomical gift document may be amended or revoked at any time by simply destroying or mutilating the document.¹⁰ Gifts made by will may be revoked by codicil or any other method recognized for amending a will.¹¹ If the document has been delivered to a specified donee, the donor may execute and deliver a revocation to the donee, make an oral statement revoking the gift to

⁵Unif. Anatomical Gift Act §2, 8A U.L.A. 34 (1968).

⁶Unif. Anatomical Gift Act §4(a), 8A U.L.A. 43 (1968).

⁷Unif. Anatomical Gift Act §4(b), 8A U.L.A. 43 (1968). If the donor is unable to sign, the document may be signed for him or her in the presence of two witnesses.

⁸Unif. Anatomical Gift Act §5, 8A U.L.A. 55 (1968).

⁹Unif. Anatomical Gift Act §4(c), 8A U.L.A. 44 (1968).

¹⁰Unif. Anatomical Gift Act §6(b), 8A U.L.A. 57 (1968).

¹¹Unif. Anatomical Gift Act §6(c), 8A U.L.A. 57 (1968)

the donee in the presence of two persons, or carry a card revoking the gift on his or her person.¹²

If a person fails to make a gift or communicate his or her intention not to make a gift prior to death, certain relatives or the next of kin of the decedent may make an anatomical gift.¹³ Accordingly, it is extremely important for clients who do not wish to make an anatomical gift to nevertheless clearly and strongly place that decision in an appropriate document so that the next of kin will follow through on that desire.

The discussion of anatomical gifts, like many other areas in estate planning, is often uncomfortable and unpleasant. It is, however, a highly important topic that should be addressed by legal assistance attorneys interested in doing a thorough job for their clients.

¹²Unif. Anatomical Gift Act §6(a), 8A U.L.A. 57(1968).

¹³Unif. Anatomical Gift Act §2(b), 8A U.L.A. 34 (1968). The Act specifies the following order of priority among the relatives who are authorized to make a binding gift: 1) spouse; 2) adult son or daughter; 3) either parent; 4) adult brother or sister; 5) guardian of a person of the decedent at the time of death; and 6) any other person authorized by law. The DOD Directive concerning anatomical gifts is consistent with this approach, but states that the wishes of the next of kin will be honored even if a valid donor document exists. Dep't of Defense Directive 6465.3, Organ and Tissue Donation, para. F2e (Aug. 14, 1987).

WILLS GUIDE

APPENDICES

APPENDIX A

MINIMUM AGE REQUIREMENT FOR EXECUTION OF A WILL

STATE	MINIMUM AGE FOR REAL PROPERTY	MINIMUM AGE FOR PERSONAL PROPERTY
Alabama	18	18
Alaska	18	18
Arizona	18	18
Arkansas	18	18
California	18	18
Colorado	18	18
Connecticut	18	18
Delaware	18	18
Dist. of Columbia	18	18
Florida	18	18
Georgia	14	14
Ham	18	18
Hawaii	18	18
Idaho	18	18 (or emancipated minor)
Illinois	18	18
Indiana	18	18 (or younger if member of Armed Forces or Merchant Marines)
Iowa	18	18
Kansas	18	18
Kentucky	18	18
Louisiana	16	16
Maine	18	18
Maryland	18	18
Massachusetts	18	18
Michigan	18	18
Minnesota	18	18
Mississippi	18	18
Missouri	18	18
Montana	18	18

STATE	MINIMUM AGE FOR REAL PROPERTY	MINIMUM AGE FOR PERSONAL PROPERTY
Nebraska	18	18
Nevada	18	18
New Hampshire	18	18 (or younger if married)
New Jersey	18	18
New Mexico	18	18
New York	18	18
North Carolina	18	18
North Dakota	18	18
Ohio	18	18
Oklahoma	18	18
Oregon	18	18 (or younger if married)
Pennsylvania	18	18
Puerto Rico	14	14
Rhode Island	21	18
South Carolina	18	18
South Dakota	18	18
Tennessee	18	18
Texas	18	18 (or married or in Armed Forces)
Utah	18	18
Vermont	18	18
Virgin Islands	18	18
Virginia	18	18
Washington	18	18
West Virginia	18	18
Wisconsin	18	18
Wyoming	19	19

APPENDIX B

PERMISSIBLE TYPES OF WILLS

STATE	HOLOGRAPHIC WILL	NUNCUPATIVE (ORAL) WILL	SOLDIERS' & SEAMAN'S WILL
Alabama	Yes	No	No
Alaska	Yes	No	Yes ¹
Arizona	Yes	No	No
Arkansas	Yes	No	No
California	Yes	No	Yes
Colorado	Yes	No	No
Connecticut	No	No	No
Delaware	No	No	No
Dist. of Columbia	No	No	Yes
Florida	No	No	No
Georgia	No	Yes	Yes
Guam	Yes	Yes	Yes
Hawaii	No	No	No
Idaho	Yes	No	No
Illinois	No	No	No
Indiana	No	Yes ¹	Yes
Iowa	No	No	No
Kansas	No	Yes	No
Kentucky	Yes	No	No
Louisiana	Yes	Yes	Yes
Maine	Yes	No	No
Maryland	No	No	Yes
Massachusetts	No	No	Yes
Michigan	Yes	No	No
Minnesota	No	No	No
Mississippi	Yes	Yes	Yes
Missouri	No	Yes	No
Montana	Yes	No	No
Nebraska	Yes	No	No

STATE	HOLOGRAPHIC WILL	NUNCUPATIVE (ORAL) WILL	SOLDIERS' & SEAMAN'S WILL
Nevada	Yes	Yes	No
New Hampshire	No	Yes	Yes
New Jersey	Yes	No	No
New Mexico	No	No	No
New York	No	No	Yes
North Carolina	Yes ¹	Yes	Yes
North Dakota	Yes	No	No
Ohio	No	Yes ¹	No
Oklahoma	Yes	No	Yes
Oregon	No	No	No
Pennsylvania	Yes	No	No
Puerto Rico	Yes	Yes	Yes
Rhode Island	No	No	Yes
South Carolina	No	Yes	Yes
South Dakota	Yes	No	Yes
Tennessee	Yes	Yes ¹	Yes
Texas	Yes	Yes	No
Utah	Yes	No	No
Vermont	No	Yes ¹	Yes
Virgin Islands	No	No	Yes
Virginia	Yes	No	Yes ¹
Washington	No	Yes ¹	Yes
West Virginia	Yes	No	Yes
Wisconsin	No	No	No
Wyoming	Yes	No	No

1. Effective to dispose of all or some lesser amount of personal property only.

APPENDIX C

ATTESTATION REQUIREMENTS

STATE	NO. OF WITNESSES REQ'D FOR VALID EXECUTION	EFFECT OF INTERESTED WITNESSES
Alabama	2	No effect.
Alaska	2	No effect.
Arizona	2	No effect.
Arkansas	2	Provision to witness only valid up to amount witness would have received through intestacy unless there are two other disinterested witnesses.
California	2	Provision valid but creates rebuttable presumption that provision to witness was procured by fraud, duress, menace, or undue influence.
Colorado	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Connecticut	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Delaware	2	No effect.
Dist. of Columbia	2	Voids provision to witness unless witness is entitled to intestate share.'
Florida	2	No Effect.
Georgia	2	Voids provision to witness. Husband may be witness to will by which a legacy is given to his wife.

STATE	NO. OF WITNESSES REQ'D FOR VALID EXECUTION	EFFECT OF INTERESTED WITNESSES
Guam	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Hawaii	2	No effect.
Idaho	2	No effect.
Illinois	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Indiana	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Iowa	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Kansas	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Kentucky	2	Voids provision to witness unless witness entitled to intestate share.'
Louisiana	2	Voids entire will.
Maine	2	No effect.
Maryland	2	No effect.
Massachusetts	2	Voids provision to witness or witness's spouse unless two other disinterested witnesses.

STATE	NO. OF WITNESSES REQ'D FOR VALID EXECUTION	EFFECT OF INTERESTED WITNESSES
Michigan	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share. ¹
Minnesota	2	No effect.
Mississippi	2	Voids provision to witness unless witness is entitled to intestate share. ¹
Missouri	2	Provision to witness only valid up to amount witness would have received through intestacy, unless there are two other disinterested witnesses.
Montana	2	Voids provision to witness unless there are two other witnesses or witness entitled to intestate share. ¹
Nebraska	2	Provision to witness only valid up to amount witness would have received through intestacy, unless there is one other disinterested witness.
Nevada	2	Voids provision to witness unless there are two other subscribing witnesses.
New Hampshire	2	Voids provision to witness or witness's spouse unless there are two other disinterested witnesses. ³
New Jersey	2	No effect.
New Mexico	2	No effect.
New York	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share. ¹

STATE	NO. OF WITNESSES REQ'D FOR VALID EXECUTION	EFFECT OF INTERESTED WITNESSES
North Carolina	2	Voids provision to witness unless there are two other disinterested witnesses.
North Dakota	2	No effect.
Ohio	2	Voids provision to witness unless witness is entitled to intestate share. ¹
Oklahoma	2	Voids provision to witness unless there are two disinterested witnesses or witness entitled to intestate share. ¹
Oregon	2	No effect.
Pennsylvania	2	No effect.
Puerto Rico	3 plus notary ²	Neither heirs nor legatees named in open will may be witnesses thereto. Prohibition limited to devise of real property.
Rhode Island	2	Any disposition to witness is null and void.
South Carolina	2 ⁴	Provision to witness or witness's spouse is valid up to amount witness would have received under law of intestacy.
South Dakota	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share. ¹
Tennessee	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share. ¹

STATE	NO. OF WITNESSES REQ'D FOR VALID EXECUTION	EFFECT OF INTERESTED WITNESSES
Texas	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Utah	2	Provision to witness not invalid, but witness limited to lesser of amount provided in will or intestate share to which witness is entitled.
Vermont	3	Voids provision to witness or witness's spouse unless there are three other disinterested witnesses or witness is heir at law.
Virgin Islands	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Virginia	2	No effect.
Washington	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
West Virginia	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Wisconsin	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'
Wyoming	2	Voids provision to witness unless there are two other disinterested witnesses or witness entitled to intestate share.'

1. Witness may take share of will not exceeding the amount the witness would receive under the law of intestacy.

2. Puerto Rico requires three witnesses and notary for open will. Closed will requires five witnesses and notary.

3. For wills executed on or before 31 Dec 83 three witnesses are required for execution, and for wills executed on or after 1 Jan 84 two witnesses are required for execution.

4. For wills executed on or after 28 June 84 two witnesses are required for execution.

APPENDIX D

FIDUCIARY REQUIREMENTS

EXECUTOR REQUIREMENTS

GUARDIAN REQUIREMENTS

STATE	Bond		Nonresident as Executor	Bond Req'd	Testamentary Waiver	Nonresident as Guardian
	Testamentary Req'd	Waiver				
(Note: * = No Statutory Provision)						
Alabama	Yes	Yes	Yes	Yes	Yes	*
Alaska	Yes	Yes	Yes	*	—	Yes
Arizona	Yes	Yes	Yes	Yes ¹⁶	Yes ¹⁶	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	Yes ¹⁶	Yes	Yes
Colorado	No	—	Yes	No	—	Yes
Connecticut	Yes	Yes	Yes	No ¹⁶	Yes	Yes
Delaware	No	Yes	Yes	Yes	Yes	Yes
Dist. of Columbia	Yes	Yes	Yes	*	*	Yes
Florida	Yes	Yes	No ¹	Yes	Yes	No ¹
Georgia	No ¹⁶	—	Yes	Yes ¹⁶	Yes ⁵	No
Guam	Yes	Yes	No	No ¹⁶	—	*
Hawaii	No	—	No	Yes ¹⁶	*	Yes
Idaho	No ¹⁶	—	Yes	Yes ¹⁶	*	Yes
Illinois	Yes	Yes	Yes	Yes	Yes	Yes
Indiana	No ¹⁶	—	Yes ²	Yes	*	Yes ²
Iowa	Yes	Yes	Yes ³	Yes	*	Yes ³
Kansas	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes ¹	Yes	Yes	Yes
Louisiana	No ⁹	—	Yes	Yes	*	Yes
Maine	No ¹⁶	—	Yes	No ¹⁶	*	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes	Yes	Yes	Yes
Michigan	Yes	Yes	Yes	No	—	Yes
Minnesota	Yes	Yes	Yes	Yes ⁵	Yes	Yes
Mississippi	Yes ¹⁶	Yes	Yes	Yes	Yes	Yes

EXECUTOR REQUIREMENTS

GUARDIAN REQUIREMENTS

STATE	Bond		Nonresident Bond		Nonresident	
	Testamentary		Testamentary		Testamentary	
	Req'd	Waiver	as Executor	Req'd	as Guardian	Req'd
(Note: * = No Statutory Provision)						
Missouri	Yes	Yes	Yes	No		Yes
Montana	No ¹⁸	Yes	Yes	No ¹⁸	*	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes ⁵	Yes
Nevada	Yes ⁵	Yes	Yes	Yes	Yes	Yes ⁸
New Hampshire	Yes	Yes	No ⁷	Yes	*	Yes
New Jersey	No ¹⁸	—	Yes	Yes	*	Yes
New Mexico	No ¹⁸	—	Yes	Yes ¹⁸	*	Yes
New York	No	—	Yes	No	—	Yes
North Carolina	Yes	Yes	Yes	Yes	Yes	*
North Dakota	No	—	Yes	Yes	Yes	Yes
Ohio	Yes	Yes	Yes ⁸	Yes	Yes	No ¹⁸
Oklahoma	Yes	Yes	Yes	Yes	*	No ¹⁹
Oregon	Yes	Yes	Yes	Yes	*	Yes
Pennsylvania	Yes	Yes	Yes	No	—	Yes
Puerto Rico *	—	*	Yes	Yes	*	
Rhode Island	Yes	Yes	No ⁷	Yes	Yes	No ⁹
South Carolina	No ¹⁰	—	Yes	Yes	*	Yes
South Dakota	Yes	Yes	Yes	Yes	Yes	*Yes
Tennessee	Yes	Yes	No ¹¹	Yes	Yes	No ¹¹
Texas	Yes	Yes	Yes	Yes	Yes	*
Utah	Yes	Yes	Yes	Yes ¹⁸	*	Yes
Vermont	Yes	Yes	Yes	Yes	*	No ⁹
Virgin Islands	Yes	Yes	No ¹⁶	Yes	*	*
Virginia	Yes	Yes	No ¹²	Yes	Yes	No ¹²
Washington	Yes ¹⁷	Yes	Yes	Yes ⁵	—	Yes
West Virginia	Yes	Yes ¹³	No ¹⁴	Yes	Yes ¹³	No ¹⁴
Wisconsin	Yes	Yes	Yes ¹⁵	Yes ¹⁶	Yes ¹⁶	Yes ¹⁵
Wyoming	Yes	Yes	Yes ²	No ¹⁶	—	Yes

-
1. Nonresident may not be executor unless a designated relative. Same requirement for guardian.
 2. Nonresident qualifies as executor provided he serves jointly with resident executor. Same requirement for guardian.
 3. Nonresident qualifies as executor provided resident fiduciary also appointed. Same requirement for guardian.
 4. Bond required only if executor appointed by court.
 5. Bond required but amount is within discretion of the court.
 6. Nonresident qualifies as guardian provided he associates resident as co-guardian.
 7. Nonresident does not qualify as executor unless judge gives approval.
 8. Nonresident does not qualify as executor or guardian unless surviving spouse or next of kin, or resides in a state which authorizes appointment of an executor not related to the maker.
 9. Nonresident does not qualify as guardian unless appointed by express terms of will or is a relative.
 10. No bond required if executor is resident of South Carolina. Nonresident must post bond.
 11. Nonresident does not qualify as guardian or executor unless resident appointed as co-fiduciary.
 12. Nonresident does not qualify as executor or guardian unless resident appointed as co-fiduciary.
 13. Bond requirement may be waived for resident executors only.
 14. Nonresident does not qualify as executor or guardian unless he is a close relative of testator, or testator is nonresident at time of his death.
 15. Nonresidency may be sufficient cause for nonappointment or removal.
 16. Court may require bond.
 17. Bond not required if executor is the surviving spouse.
 18. Nonresident only qualifies if parent of minor or if minor over age 14 selected him.
 19. Nonresident qualifies as guardian if a spouse, child, parent, brother, sister, aunt, uncle, niece or nephew of minor/incompetent.

APPENDIX E
WILLDRAFTING CHECKLIST

I. DATA ACCUMULATION.

A. Personal.

1. Names, aliases, former names, social security numbers (SSN's).
2. Dates of birth (DOB).
3. Prior divorces - date, final, verified.
4. Residence.
5. Domicile.
6. Citizenship/immigration status of the parties.
7. Children: Names, DOB's, SSN's
 - a. Of this marriage.
 - b. Prior marriages.
 - c. Others expected.
8. Any antenuptial contract?
9. Any property declarations or transmutation agreements?
10. Any prior marital termination contract?
 - a. This marriage.
 - b. Prior marriages.
11. Occupations of parties and children.
12. Work histories.
13. Education levels.
14. Special needs/handicaps.
15. Community property?

B. Assets.

C. Insurance policies.

- a. Name of insurer.
 - b. Policy number.
 - c. Policy owner.
 - d. Type.
 - e. Face value.
 - f. Transferable?
 - g. Beneficiary?
1. Stocks, bonds, and notes.
 - a. Certificates? Street name?
 - b. Location of certificate/instrument.
 - c. Security perfected.
 - d. Valuation; date and method used.
 - e. Income tax basis.
 - f. Form of title.

2. Tangible personal property.
 - a. Automobile(s).
 - (1) Make, model, and year.
 - (2) Fair market value and method of valuation.
 - (3) Outstanding loan balance and monthly payment
 - (4) Form of ownership.
 - b. Collectibles, furnishings, and appliances that client believes are significant.
 - (1) Describe.
 - (2) Value and method of valuation.
 - (3) Outstanding loan balances and monthly payments.
 - c. Miscellaneous items.
 - (1) Describe.
 - (2) Value and method of valuation.
 - (3) Outstanding loan balances and monthly payments.

3. Intangibles.
 - a. Financial accounts.
 - (1) Type.
 - (2) Account number.
 - (3) Owner.
 - (4) Institution (name, address).
 - (5) Value.
 - b. Partnership Interests/Shareholders.
 - (1) Income tax basis and date of acquisition.
 - (2) Expectancies and Nonvested Assets.
 - (a) Nature.
 - (b) Date contingency to be fulfilled.
 - (c) Controlled by whom?

4. Realty.
 - a. Present occupant.
 - b. Popular description.
 - c. Legal description.
 - d. Title in whose name? Form?
 - e. Encumbrances?
 - (1) Who is creditor?
 - (2) Type of security?
 - (3) Who is debtor?
 - (4) Perfected?
 - (5) Amount due? Payment rate?
 - (6) Any balloon?
 - (7) Interest rate? Flexible?
 - (8) Any unrecorded claims - i.e., amount owed to family?
 - (9) Valuation - method used.
 - f. If leased length of lease - rental received/obligations of owner.
 - g. Basis for income tax purposes (depreciation, gain previously deferred).

D. Debts and Claims.

1. General creditors.
 - a. Who are the creditors?
 - b. Type of debt. (unsecured loan, revolving charge account, mortgage, etc.)
 - c. Reason for incurring the debt.
 - d. Encumbered property.
 - e. Who is obligated to pay?
2. Estate Taxes.
 - a. Federal.
 - b. State.
3. Death and Funeral Expenses.

II. FORMALITIES.

- A. Testamentary capacity.
 - 1. Age.
 - 2. Competent.
 - 3. U.S. citizen.
- B. Revoke prior wills.
 - 1. Codicil.
 - 2. New will.
- C. Type of will.
 - 1. Holographic.
 - 2. Oral.
 - 3. Formal.
- D. Advice to testator.
 - 1. Liquidity problems.
 - 2. Probate avoidance vehicles.
 - 3. Coordinate beneficiary forms on life insurance.
 - 4. Ways to increase value of estate.

III. DRAFTING THE AGREEMENT.

- A. Preamble.
 - 1. Identify testator (trix).
 - 2. Declare domicile.
 - 3. Military status.
 - 4. Revoke prior wills.
 - 5. Recitals (optional).
 - a. Spouse.
 - b. Children.
- B. Funeral/Burial Desires.
 - 1. Left in separate memorandum?
 - 2. Anatomical gifts.
 - 3. Living will.
- C. Specific bequests.
 - 1. Carefully described.
 - 2. Ademption problems?
 - 3. Insurance proceeds pass with property.
 - 4. Property subject to encumbrance.
 - 5. Real estate.
 - a. Ancillary probate.
 - b. Encumbered?
 - c. Freedom to distribute.
 - 6. Demonstrative bequests.
 - a. Ademption problems.
 - b. True intent of testator ascertained?
 - 7. General bequests.
 - 8. Conditional bequests.
 - a. Condition clearly spelled out.
 - b. Time for performance clear.
 - c. Not expressed as a mere wish.
 - 9. Charitable bequests.
 - a. Organization qualifies as charity
 - b. Organization described carefully.
 - 10. Will testator leave a personal property letter?
 - a. Binding letter.
 - b. Incorporate a list by reference?
 - c. Referred to in will.

- D. Residuary Bequests.
 - 1. Primary beneficiary(ies).
 - 2. Alternate beneficiary(ies).
 - 3. Catchall beneficiary.
 - 4. Property to minors.
 - a. Alternatives to guardianship (custodian account/trust).
 - b. Per stirpes/per capita?
 - c. Benefit afterborn?
- E. Testamentary Trusts.
 - 1. Type of trust.
 - a. Unitary.
 - b. Single trust.
 - 2. Purpose of trust.
 - 3. Name of trustee.
 - a. Specify alternate.
 - b. Powers.
 - c. Bond.
 - d. Compensation.
 - 4. Distribution.
 - a. Income.
 - b. Principal.
 - c. Age of distribution.
 - 5. Rule Against Perpetuities.
 - 6. Spendthrift trust clause.
 - 7. Bailout clause.
- F. Appointment of Fiduciaries.
 - 1. Primary and alternates named.
 - 2. Bond waived.
 - 3. Corporate or individual.
 - 4. Single individual, not co-fiduciary.
 - 5. Ancillary probate required.
 - 6. Residence of fiduciary.
 - 7. Compensation.
 - 8. Powers.
 - a. Enumerated powers.
 - b. Incorporate state statutory powers.
- G. Administrative Clauses.
 - 1. Survivorship clause.
 - a. Simultaneous death.
 - b. Survivorship period less than 6 months.
 - c. Specified in terms of hours.
 - 2. Debts/apportionment clause.
 - a. Does will unnecessarily require testator to pay "all just debts"?
 - b. Clause give power to extend or renew?
 - c. Tax apportionment.
 - (1) Apportioned among all beneficiaries.
 - (2) Paid for out of residuary.
 - d. Abatement problems considered?
 - 3. No contest (interrum) clauses.
 - 4. Disinheritance of relative.
 - a. Omit reasons for disinheriting.
 - 5. Severability Clause.
 - 6. Veteran's benefits clause.
- H. Definitions.
 - 1. Per stirpes (or per capita).
 - 2. Children.
 - a. Stepchildren.
 - b. Adopted.
 - c. After-born.
 - 3. Issue.
 - 4. Terms such as personal property and household goods.
- I. Attestation, Exordium, and Self-Proving.
 - 1. Contains signature for testator and witnesses.
 - 2. Place for date.
 - 3. Self-proving affidavit included for state of domicile.

IV. **WILL EXECUTION.**

1. Supervised by attorney.
2. Witnesses.
 - a. At least 3 adults.
 - b. Disinterested.
 - c. Initial pages.
 - d. Sign will and self-proving affidavit.
3. Testator.
 - a. Declare document is will.
 - b. Sign will.
 - c. Sign self-proving affidavit.
4. Procedure.
 - a. Follow SOP.
 - b. Witnesses sign in front of each other and testator.
 - c. Execute only one will.
 - d. Don't remove staples.

V. **TERMINATING RELATIONSHIP.**

1. Advice to client.
 - a. Need to revise will.
 - b. Where to keep will.
 - c. How to revoke will.
2. Terminate attorney-client relationship.

**ESTATE
PLANNING
FORMS AND
HANDOUTS**

WILL INSTRUCTIONS SHEET

1. **PROOFREAD.** Your will must be exactly correct. Make certain that all names are spelled correctly. Be sure that you understand all the terms and provisions in your will. No corrections should be made after the will is signed.

2. **EXECUTION OF THE WILL.** Sign only the original copy of your will. It must also be signed by three witnesses over the age of 21, not related to you by blood or marriage, and not named in the will. The witnesses must all be present at the signing. They must witness your signature and the signature of the other witnesses.

3. **WITNESSES.** If you are not a resident of this state, the witnesses may be called to testify at a probate proceeding. Hence, you should choose persons (not related by blood or marriage and not mentioned in the will) who live near your legal residence. Avoid using a young, unmarried woman since her name and residence are subject to change. If possible, execute your will in your home community. If this cannot be done, use persons whose future addresses will be known to you. If they are in the service, they should write their service numbers under their signature. Next to their signatures, they should write their street address (permanent home of record), next to that the city and state of their permanent residence. All wills should be executed at the Legal Assistance Office. You must furnish your own three (3) witnesses. Once a will containing a self-proving clause is notarized at the Legal Assistance Office, there is no further need for the witnesses.

4. **SAFE DEPOSIT BOX.** In some states, a safe deposit box is sealed upon death and cannot be opened until state authorities have an opportunity to examine its contents. Other states allow the box to be opened to remove the will. Therefore, before placing your will in a safe deposit box, check the local practice with your banker.

5. **PERIODICAL REVIEW.** The passage of time and changing conditions make it advisable to have the contents of a will reviewed periodically by an attorney. Events, such as marriage, birth of a child, divorce, death of a beneficiary, guardian or executor, change in legal residence, change in property owned, retirement,

discharge, or other separation from the service, occurring after a will is made, often affect its provisions. You may have your will reviewed at any time by an attorney in the Legal Assistance Office.

6. **REVOCATION.** Because your will is not effective until your death, you can revoke or change it at any time. Any change in a will, however, should be made with the same formalities as those required for the original execution of the will. Therefore, do not attempt to change the will yourself. Consult the Legal Assistance Officer or another attorney to have a new will drawn.

7. **SUPPLEMENTAL LETTER OF INSTRUCTION.** It is recommended that you write a supplemental letter of information and last instruction. While such a letter is not legally binding, it can contain a good deal of information that would aid the executor in settling the estate with the least amount of time and cost. It also could include your wishes as to how you would like certain matters outside the province of your will to be handled.

The vital information should include the location of important documents, such as your birth certificate, Social Security card, marriage or divorce certificate, naturalization and citizenship papers, and your Armed Forces discharge papers. In addition, you should list, with their locations, your safe deposit boxes and keys, insurance policies, bank checking and savings accounts, securities, and real and personal property assets. Finally, in the information part of the letter, you should include the current address of any person named in the will; i.e., beneficiaries, guardians, and executors.

You also might leave instructions as to the type, cost, and location of your funeral and burial or cremation. You might specify, for example, that, as a veteran, you would prefer burial in a particular national cemetery. Instructions concerning your business also might be included, especially if your will suggests or provides that it be continued. If you feel it necessary, you might also give your reasons for certain actions taken in your will, such as disinheritances. Making this explanation outside the will sometimes is recommended, because it tends to avoid a complicated will that might invite costly and time-consuming litigation.

WILL INFORMATION SHEET

WHAT IS A WILL? A will is a document which allows you to determine how your assets and property will be distributed upon your death. It also allows you to determine who will be responsible for distributing your property and who will be responsible for the care of your children.

WHAT WILL HAPPEN IF I DIE WITHOUT A WILL? If you die without a will, your property will be distributed in accordance with the laws of the state. Normally, property will go to your spouse and children, your parents, or to your brothers and sisters. The property will go to the state only if you die without heirs.

WHAT WILL HAPPEN TO MY CHILDREN IF I DIE WITHOUT A WILL? If your spouse is living, he/she retains full custody of the children. If your spouse does not survive you, the probate court will appoint a guardian for your children in accordance with the laws of your state.

WHAT IS A BENEFICIARY? A beneficiary is a person to whom you leave property in your will. Normally, a primary beneficiary is named and a contingent beneficiary is designated to inherit property in the event that the primary beneficiary does not survive the testator. (The person who makes the will is called a "testator" if male, or a "testatrix" if female.)

WHAT IS A GUARDIAN? A guardian is a person who will care for your minor children and manage any property given directly to them by your will. The guardian's actions are subject to supervision by the probate court. An alternate guardian should be named in the will in the event that the appointed guardian is unable or unwilling to serve.

WHAT IS AN EXECUTOR/EXECUTRIX? The executor is responsible for paying your funeral expenses, court costs, and estate debts. He or she also supervises the distribution of your estate in accordance with the provisions of your will. An alternate executor should be named in the will in the event that the appointed executor is unwilling or unable to serve.

WHO NEEDS A WILL? If you are married, or have children, or have a specific beneficiary in mind, or have substantial assets, you should seriously consider getting a will. If you are single, have no children, and few assets, you should consider getting a will. It costs nothing to get a will through the legal assistance office; why not take advantage of a free service?

INSTRUCTIONS CONCERNING YOUR
LAST WILL AND TESTAMENT

1. CUSTODY AND SAFEGUARDING: Now that your Will has been executed, you should keep it in a safe place where it can be found in the event of your death. Keep in mind that upon your death, your safe deposit box may be sealed and opened only upon presentation of a court order. This requires time, and access to the Will may be important during that time. You may want to check with your individual banking institution to determine its' policy regarding access to a safe deposit box upon the owner's death. For reference purposes, you may wish to retain the unsigned copy of your Will in an envelope, with a notation of the Will's location and date of execution.

2. PERIODIC REVIEW: In the event of a change in marital status, birth or adoption of a child, or death of a named beneficiary, executor (personal representative) or guardian occurring after the making of a Will, certain provisions in the Will may be affected. A substantial change in your financial situation may also affect your Will. When such an instance occurs, review your Will to see if you have made allowance for it. If necessary, take your Will to your Legal Assistance Office or another attorney to see if it needs updating.

3. CHANGES AND REVOCATIONS: You may change your Will at any time. A change is called a Codicil. A codicil must be made with the same formality as was the Will. Do not attempt to change the Will yourself. Any attempt to do so may invalidate the Will. Take your Will to your Legal Assistance Office or another attorney to discuss how the changes may best be incorporated into your Will.

Legal Assistance Office
Office of the Staff Judge Advocate

DEPARTMENT OF THE ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
LEGAL ASSISTANCE SECTION

LEGAL ASSISTANCE FACT SHEET: Personal Letter of Instruction

EXPLANATION. It is recommended that a personal letter of instruction be prepared when your will is. This letter is not a substitute for your will, nor is it legally required, but it does perform two vital functions. It tells the location of all important papers and could express certain personal desires. This letter can be opened and read immediately upon your death. It should be addressed to the personal representative named in your will, and to one other party, preferably your husband or wife, or alternatively, to your family lawyer. The following format is provided for your use in your personal letter of instruction. It is suggested that you complete the form in pencil for repeated use as changes occur. Once you have completed the form you should type or write out your personal letter using the information you have listed on the form. This letter should be delivered to your personal representative for his/her later use. If you have any questions about the letter of instruction, please feel free to discuss them with a Legal Assistance Attorney.

TO:

I. Upon my death please contact the following persons:

	NAME	ADDRESS	PHONE NUMBER
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

II. I have the following bank accounts:

	TYPE OF ACCOUNTS	ACCOUNT NUMBER	LOCATION
1.	Checking -		
2.	Savings -		
3.			
4.			
5.			

III. I have the following credit cards:

	NAME OF ACCOUNT	ACCOUNT NUMBER	LOCATION
1.			
2.			
3.			
4.			
5.			

IV. I have the following insurance policies:

	TYPE OF POLICY	COMPANY	POLICY NUMBER	LOCATION
1.	Life			
2.	Life			
3.	Automobile			
4.	Home Owners (Renters)			
5.	Fire			
6.				
7.				
8.				

V. I own the following real estate:

	LOCATION OF PROPERTY	LOCATION OF DEED
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

VI. I own the following investment accounts (or stocks, bonds, etc.):

	NAME OF INVESTMENT-ACCOUNT NUMBER-LOCATION OF CERTIFICATE
1.	_____
2.	_____
3.	_____
4.	_____
5.	_____
6.	_____

OR MY INVESTMENT COUNSELOR IS: _____

VII. The Social Security Numbers of myself and my family are:

	NAME	SOCIAL SECURITY NUMBER
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

VIII. My funeral instructions are:

IX. My personal representative is to distribute the following personal items: (THIS MAY NOT BE LEGALLY BINDING-if you wish to be sure, you should change your will).

ITEM	PERSONS TO RECEIVE ITEM
1.	<hr/>
2.	<hr/>
3.	<hr/>
4.	<hr/>
5.	<hr/>

(Signature)

UNDERSTANDING YOUR POWER OF ATTORNEY

1. It is the policy of this office that you understand the meaning and effect of your power of attorney. The power of attorney is one of the strongest legal documents that an individual can give to another person. Accordingly, you must be making it of your own free will. It authorizes your agent (grantee) to act on your behalf and carry on your business in your absence. PLEASE NOTE that a person or business does not have to accept or acknowledge your power of attorney; it is totally within their discretion.
2. A GENERAL POWER OF ATTORNEY authorizes your agent to do any number of acts relating to your property and personal affairs. Because this document grants broad, virtually unlimited authority to your agent, it should be given to a person you trust completely.
3. A SPECIAL POWER OF ATTORNEY authorizes your agent to do one or more certain **specified** acts, such as selling your car, shipping household goods, or cashing a paycheck.
4. You should grant no greater power than is absolutely necessary. In addition, your agent (grantee) should be someone in whom you have absolute trust and confidence.
5. You will formally execute two copies of your power of attorney. You should give one copy to your agent and keep the second copy for yourself. Photocopies of your power of attorney are generally unacceptable because they do not contain original signatures or the notarial seal.
6. You should not make a power of attorney last any longer than is necessary. Local policy is that powers of attorney be limited to a maximum of three (3) years. Your power of attorney will automatically terminate upon the death of either you or your agent. Otherwise, it will terminate on the date that you specified in the document. Should you desire to revoke your power of attorney prior to its stated termination date, you should seek the assistance of the Legal Assistance Office or of a civilian attorney in order to do so.
7. If you have questions concerning your power of attorney, please contact your local Legal Assistance Office.

LEGAL ASSISTANCE OFFICE

MORTUARY PLANNING SHEET

TO THE NEXT OF KIN OF: _____

This is an expression of my preferences and desires regarding the disposition of my remains and other arrangements at the time of my death. I am writing this to make things easier for you and to make my thoughts known.

I feel it would be best if preparation, casketing and transportation were handled by:

_____ Next of kin working with local funeral home.

_____ The military authorities, through their contact with a local funeral home (applicable only if on active duty).

_____ Next of kin working with: _____

(Name and address of funeral home)

At the time of death, I prefer:

_____ Conventional Burial. _____ I would like to be in

_____ Cremation. _____ Uniform:
(Branch of Service)

_____ No preference.

My preference for a burial place or disposition of ashes is:

_____ Private Cemetery. _____
(Show name and location)

_____ National or other Gov't Cemetery, contingent on availability of space. _____
(Show name and address)

_____ Burial at sea.

_____ Wherever you decide it would be easiest for you.

_____ Other: _____

_____ In the event that my body should have to be shipped to another location, I prefer that the following funeral home be selected as "receiving" funeral home.

I desire the following religious services be conducted:

☐ Church services. (Show name and location of church) _____

☐ Funeral home services. _____
☐ Memorial services. _____
☐ Graveside committal services. _____
☐ Other, please explain: _____

(More than one block may be marked)

Military honors desired if available from _____ resources.
(Service)

☐ _____ Chaplain _____
(Service) (Please indicate religious preference)
☐ Pallbearers. ☐ Bugler.
☐ Firing Party. ☐ Color Guard.
☐ Other, please explain: _____

My preference concerning:

- a. Government-furnished headstone or marker: ☐ Yes ☐ No
If preferred, type: _____
- b. Clergy: _____
- c. Flowers, memorials, agencies, contribution should be made to: favorite soloist or organist, psalms or other special requests: _____

- d. Friends to notify: _____

OTHER DESIRES OR NOTES:

(SIGNATURE)

(DATE)

(A copy of this document should be given to your next of kin, executor and other close relatives).

ANATOMICAL GIFT BY A LIVING DONOR

I am at least 18 years of age and make this anatomical gift to take effect upon my death. The marks in the appropriate blanks and words filled into the blanks below indicate my desires.

1. I give: My body _____;
Any needed organs or parts _____ ;
The following organs or parts: _____

_____.
2. To the following person: _____;
To any person, tissue bank, or institution authorized
by law: _____ ;
To the following named physician, hospital, tissue bank
or other medical institution: _____

_____.
3. For the following purposes:
Any purpose authorized by law: _____ ;
Transplantation: _____ ;
Therapy: _____ ;
Medical research and education _____.

Dated: _____ City and State _____

Signed by the Donor in
the presence of the following
who sign as witnesses:

Witness

Signature of Donor

Witness

Address of Donor

STATUTORY CITATIONS FOR LIVING WILL LEGISLATION

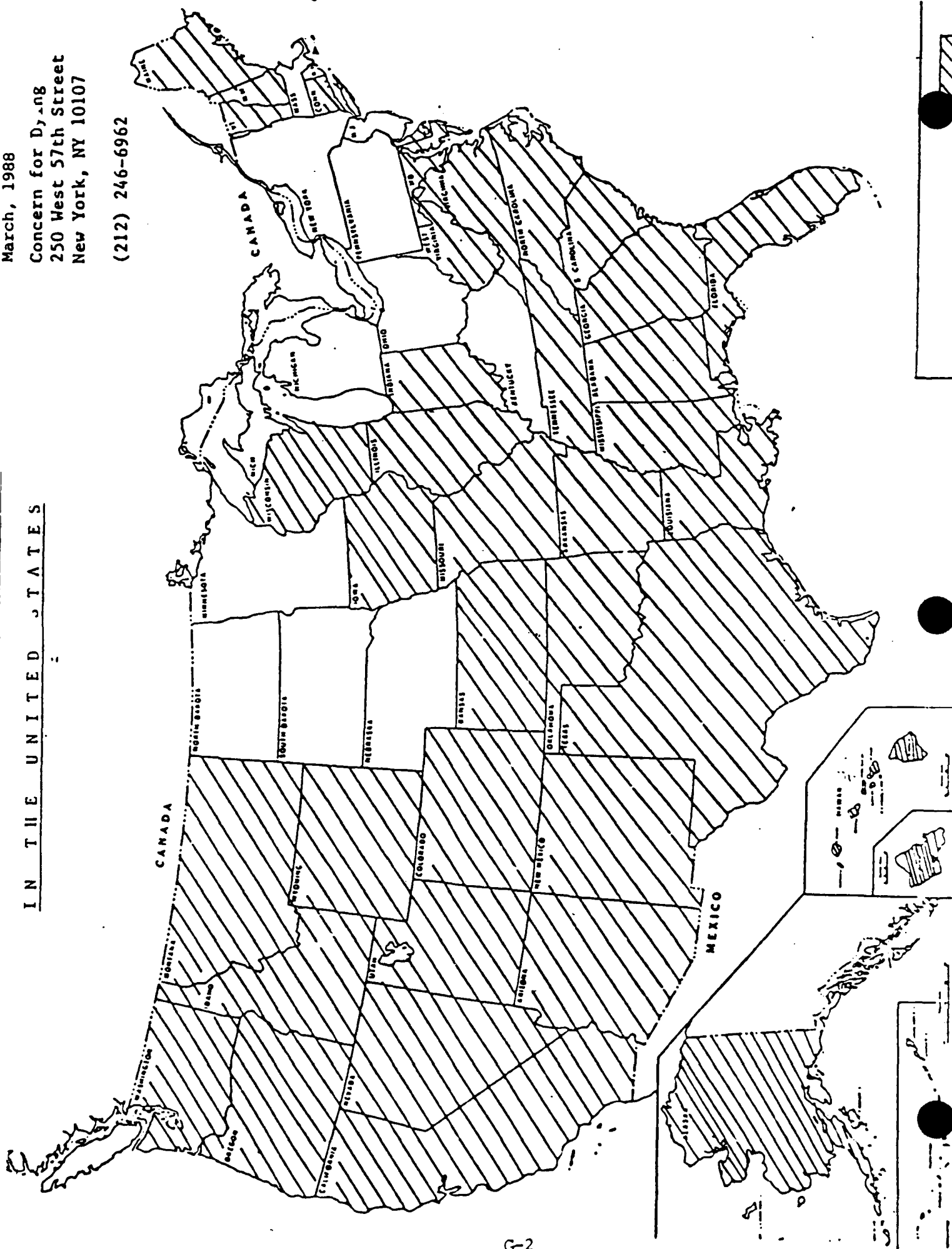
Alabama Natural Death Act, Ala. Code ss 22-8A-1 to 10 (1981)
 Alaska Rights of the Terminally Ill Act, Alaska Stat. ss 18.12.010 to .100 (Supp. 1986)
 Arizona Medical Treatment Decision Act, Ariz. Rev. Stat. Ann. ss 36-3201 to 3210 (1985)
 Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, 1987 Ark. Acts 713 (1987)
 California Natural Death Act, Cal. Health & Safety Code ss 7185-7195 (1976)
 Colorado Medical Treatment Decision Act, Colo. Rev. Stat. ss 15-18-101 to 113 (1985)
 Connecticut Removal of Life Support Systems Act, Conn. Gen. Stat. ss 19a-570 to 575 (1985)
 Delaware Death with Dignity Act, Del. Code Ann. tit. 16, ss 2501-2509 (1982)
 District of Columbia Natural Death Act of 1981, D.C. Code Ann. ss 6-2421 to 2430 (1982)
 Florida Life-Prolonging Procedure Act, Fla. Stat. Ann. ss 765.01 to .15 (1984)
 Georgia Living Wills Act, Ga. Code Ann. ss 31-32-1 to 12 (1984)
 Hawaii Medical Treatment Decisions Act, Haw. Rev. Stat. ss 327D-1 to 27 (1986)
 Idaho Natural Death Act, Idaho Code ss 39-4501 to 4508 (1977)
 Illinois Living Will Act, Ill. Rev. Stat. ch. 110 1/2 ss 701 (1984)
 Indiana Living Wills and Life-prolonging Procedures Act, Ind. Code Ann. ss 16-8-11-1 to 22 (1985)
 Iowa Life Sustaining Procedures Act, Iowa Code Ann. ss 144A.1 to .11 (1985)
 Kansas Natural Death Act, Kan. Stat. Ann. ss 65-28,101 to 28,109 (1979)
 Louisiana Life-sustaining Procedures Act, La. Rev. Stat. Ann. ss 40:1299.58.1 to .10 (1984)
 Maine Living Wills Act, Me. Rev. Stat. Ann. tit. 22, ss 2921-2931 (1985)
 Maryland Life-sustaining Procedures Act, Md. Health-Gen. Code Ann. ss 5-601 to 614 (1985)
 Mississippi Withdrawal of Life-saving Mechanisms Act, Miss. Code Ann. ss 41-41-101 to 121 (1984)
 Missouri Life Support Declarations Act, Mo. Stat. Ann. ss 459.010 to .055 (1985)
 Montana Living Will Act, Mont. Code Ann. ss 50-9-101 to 104, 111, 202 to 206 (1985)
 Nevada Withholding or Withdrawal of Life Sustaining Procedures Act, Nev. Rev. Stat. ss 449.540 to .690 (1977)
 New Hampshire Terminal Care Document Act, N.H. Rev. Stat. Ann. ss 137-H:1 to 16 (1985)
 New Mexico Right to Die Act, N.M. Stat. Ann. ss 24-7-1 to 11 (1977)
 North Carolina Right To Natural Death Act, N.C. Gen. Stat. ss 90-320 to 322 (1977)
 Oklahoma Natural Death Act, Okla. Stat. Ann. tit. 63, ss 3101-3111 (1985)
 Oregon Rights with Respect to Terminal Illness Act, Or. Rev. Stat. ss 97.050 to .090 (1977)
 South Carolina Death with Dignity Act, S.C. Code Ann. ss 44-77-10 to 160 (1986)
 Tennessee Right To Natural Death Act, Tenn. Code Ann. ss 32-11-101 to 110 (1985)
 Texas Natural Death Act, Tex. Health & Safety Code, art. 4590h (1977)
 Utah Personal Choice and Living Will Act, Utah Code Ann. ss 75-2-1101 to 1118 (1985)
 Vermont Terminal Care Document Act, Vt. Stat. Ann. tit. 18, ss 5251-5262, and tit. 13, ss 1801 (1982)
 Virginia Natural Death Act, Va. Code ss 54-325.8:1 to 13 (1983)
 Washington Natural Death Act, Wash. Rev. Code Ann. ss 70.122.010 to .905 (1979)
 West Virginia Natural Death Act, W. Va. Code ss 16-30-1 to 10 (1984)
 Wisconsin Natural Death Act, Wisc. Stat. Ann. ss 154.01 to .15 (1983)
 Wyoming Living Will Act, Wyo. Stat. ss 35-22-101 to 109 (1987)

IN THE UNITED STATES

March, 1988

Concern for Dying
250 West 57th Street
New York, NY 10107

(212) 246-6962



APPENDIX G

LIVING WILLS

SYNOPSIS OF STATE LAWS

	Model Act	Ala.	Ark.	Calif	Del.	D.C.	Ga.	Ida.	Ill.	Kan.
May the form of the directive be varied?	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes
May the directive be written for a child or an incompetent adult?	No	No	Yes	No	No	No	No	No	Yes	No
Is the directive nullified by pregnancy?	No	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes
Are penalties specified for physicians who refuse to follow a directive?	Yes	No	No	Yes	No	Yes	No	No	No	Yes
Is the directive binding only if the patient knows of a terminal condition?	No	No	No	Yes	No	Yes	No	No	No	No
Must a directive be periodically reaffirmed?	No	No	No	Yes	No	No	Yes	Yes	No	No
Must terminal conditions be confirmed by consultation and certified in writing?	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes
Does the statute provide for termination of life-sustaining procedures in the absence of a directive?	No	No	No	No	No	No	No	No	No	No

Miss.	Nev.	N.Mex.	N.C.	Ore.	Tex.	Vt.	Va.	Wash.	W.Va.	Wis.	Wy.
Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes
No	No	For Child	No	No	No	No	No	No	No	No	Yes
Yes	Yes	No	No	No	Yes	No	No	Yes	No	Yes	Yes
No	No	No	No	Yes	Yes	No	No	No	No	Yes	No
No	No	No	No	Yes	Yes	No	No	No	Yes	No	No
No	No	No	No	Yes	No	No	No	No	No	Yes	No
No	No	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes
No	No	No	Yes	No	No	No	Yes	No	No	No	No

APPENDIX H

USES OF DURABLE POWERS OF ATTORNEY

1. Management of property. The following powers should be considered and expressed in the document when appropriate:

- a. To make deposits and withdrawals from bank accounts, to sell, to lease, to borrow, to invest, etc.
- b. To have access to the principal's safe-deposit box.
- c. To sign tax returns on behalf of the principal and to represent or to obtain representation of the principal at a tax audit. [It is prudent to authorize an agent to execute the IRS's own power of attorney forms because it is not clear if the IRS will accept a durable power of attorney for the purposes described above. The IRS requires that powers of attorney relate to specific tax years. Therefore, an agent's authority to act in tax matters should be limited to a number of specific years, e.g., 1987-2002.]
- d. To deal with retirement plans (e.g., to make IRA contributions, rollovers, and voluntary contributions, to borrow from the plan, to elect pay-out options).
- e. To fund a previously created living trust or to create different forms of property ownership. [Both of these actions can be helpful in avoiding the necessity of ancillary administration with respect to real property owned in another state.]
- f. To borrow for the benefit of the principal, which may be desirable if the other alternative would be to sell a highly appreciated asset during the life of the principal, thus forfeiting the stepped-up basis at death.
- g. To deal with life insurance on the life of the principal, including such actions as increasing coverage. [This may even be possible without an additional physical exam], to use policy dividends for added insurance, and to borrow against the policy [thus giving the agent an alternative to

selling assets and possibly incurring a capital gain tax.]

h. To represent the principal in creating or modifying the terms of buy-sell agreements.

i. To forgive or collect the principal's debts.

j. To complete the principal's charitable pledges.

k. To redirect the principal's mail.

l. To cancel or continue the principal's credit cards and charge accounts.

m. To take custody of the principal's wills, deeds, life insurance policies, contracts, and securities.

n. To institute, settle, appeal, or dismiss administrative proceedings and litigation on the principal's behalf.

o. To reform estate planning documents [other than wills] if they prove to be defective after incompetency. [In this connection, some expression of intent in the durable power of attorney by the principal would be helpful. The lawyer must also be wary of changing "grand-fathered" estate planning documents if the effect would be to lose grand-fathering protection. Wills cannot be directly amended under a durable power of attorney.]

p. To nominate a conservator for the principal and a guardian for the principal's minor children.

q. To resign offices and positions, both public and private, on the principal's behalf.

2. Custody and management of the person.

a. To establish a residence for the principal [e.g., a nursing home].

b. To arrange for the principal's transportation and travel.

c. To arrange for the principal's recreation.

d. To purchase, store, repair, and dispose of (including abandonment) the principal's clothing,

consumables, household goods, furnishings, and personal effects.

e. To make advance funeral and burial arrangements and to arrange to give and to receive anatomical gifts on the principal's behalf.

f. To arrange for the care and/or disposition of the principal's pet animals.

g. To employ, compensate, and discharge domestics, companions, and other nonmedical personnel on the principal's behalf.

h. To arrange for the satisfaction of the principal's religious and spiritual needs.

i. To provide for the principal's companionship.

j. To nominate guardian's for the principal's minor children.

3. Health care decisions.

a. To obtain and disclose the principal's medical records and other personal information.

b. To employ and discharge health care personnel.

c. To give or withhold consent to medical treatment of the principal.

d. To give or withhold consent to psychiatric care of the principal.

e. To authorize relief from the principal's pain.

f. To grant releases to medical personnel and others on the principal's behalf.

g. To refuse medical treatment on the principal's behalf.

APPENDIX H

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I wish to live and enjoy life as long as possible but I do not wish to receive futile medical treatment, which I define as treatment that will provide no benefit to me and will only prolong my inevitable death or irreversible coma. I desire that my wishes be carried out through the authority given to my Agent by this document despite any contrary feelings, beliefs or opinions of other members of my family, relatives or friends. In exercising the authority given to my Agent herein, my Agent should try to discuss with me the specifics of any proposed decision regarding my medical care and treatment if I am able to communicate in any manner, even by blinking my eyes. My Agent is further instructed that if I am unable to give an informed consent to medical treatment, my Agent shall give or withhold such consent for me based upon any treatment choices that I have expressed while competent, whether under this instrument or otherwise. If my Agent cannot determine the treatment choice I would want made upon the circumstances, then my Agent should make such choice for me based upon what my Agent believes to be in my best interests. Accordingly, if:

(1) two licensed physicians who are familiar with my condition have diagnosed and noted in my medical records that my condition is incurable, terminal and expected to result in my death within twelve months regardless of what medical treatment I may receive, and they have determined that I am unable to give informed consent to medical treatment, or

(2) two licensed physicians who are familiar with my condition have diagnosed and noted in my medical records that I have been in a coma for at least fifteen days and that the coma is irreversible, meaning that there is no reasonable possibility of my ever regaining consciousness,

then my agent is authorized as follows:

(1) to sign on my behalf any documents necessary to carry out the authorizations described below, including waivers or releases of liability required by any health care provider,

(2) to give or withhold consent to any medical care or treatment, to revoke or change any consent previously given or implied by law for any medical care or treatment, and to arrange for my placement in or removal from any hospital, convalescent home, hospice or other medical facility,

(3) to require that medical treatment which will only prolong my inevitable death or irreversible coma (including by way of example only such treatment as cardiopulmonary resuscitation, surgery, dialysis, the use of a respirator, blood transfusions, antibiotics, antiarrhythmic and pressor drugs or transplants) not be instituted or, if previously instituted, to require that it be discontinued, and

(4) to require, if I have been in an irreversible coma as defined above for thirty days or more, that procedures used to provide me with nourishment and hydration (including, for example, parenteral feeding, intravenous feedings, misting, and endotracheal or nasogastric tube use) not be instituted or, if previously instituted, to require that they be discontinued, but only if the two physicians described above also determine that I will not experience pain as a result of the withdrawal of nourishment or hydration.

[or alternatively, (4) to require (despite my authorization to discontinue medical treatment described above) that procedures used to provide me with nourishment and hydration (including, for example, parenteral feeding, intravenous feedings, misting, and endotracheal or nasogastric tube use) be instituted or, if previously instituted, to require they continue.]*

APPENDIX I

LIVING WILL DECLARATION

To my Family, Doctors, and All Those Concerned with My Care: I, _____, being of sound mind make this statement as a directive to be followed if I become unable to participate in decisions regarding my health care.

If two physicians determine me to be in an irreversible, terminally ill state, or in a persistent vegetative state, I direct the following health care measures be taken:

If at any time I should suffer cardiac or respiratory arrest and it is determined by the two physicians, after examining me beforehand, that I will not benefit from resuscitation, direct that no such resuscitation be undertaken.

If at any time I am in a terminal condition or in a persistent or chronic vegetative state as determined by the two physicians described above, one of whom is my attending physician, I direct that life-sustaining treatment be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any other medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

Definitions:

A "terminal condition" is an incurable condition resulting from injury or disease in which imminent death is predictable with reasonable medical certainty.

A "persistent or chronic vegetative state" will be deemed to be a chronic state of diminished consciousness resulting from severe generalized brain injury from which there is no reasonable possibility of improvement to a cognitive state.

"Life-sustaining treatment" is any medical procedure or intervention which serves only to artificially prolong dying. Intravenous therapies are considered to be medical interventions as described above, but provision of food and water is not considered to be a medical procedure or intervention as described above. Other procedures designed solely to alleviate pain are not to be considered life-sustaining treatment, and may be continued if deemed appropriate by medical personnel.

In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this declaration shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of such refusal.

I would like to live out my last days at home rather than in a hospital if it does not jeopardize the chance of my recovery to a meaningful and sentient life or does not impose an undue burden on my family.

If any of my tissues are sound and would be of value as transplants to other people, I freely give my permission for such donation.

I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

DURABLE POWER OF ATTORNEY (optional) I hereby designate _____ to serve as my attorney-in-fact for the purpose of making medical treatment decisions. This power of attorney shall remain effective in the event that I become incompetent or otherwise unable to make such decisions for myself.

SIGNATURE

DATE

WITNESS

ADDRESS

WITNESS

ADDRESS

Sworn and subscribed to before me this _____ day
of _____, 19__.

NOTARY PUBLIC

(seal)

My commission expires:

I-2

My Living Will

To My Family, My Physician, My Lawyer and All Others Whom It May Concern

Death is as much a reality as birth, growth, maturity and old age—it is the one certainty of life. If the time comes when I can no longer take part in decisions for my own future, let this statement stand as an expression of my wishes and directions, while I am still of sound mind.

If at such a time the situation should arise in which there is no reasonable expectation of my recovery from extreme physical or mental disability, I direct that I be allowed to die and not be kept alive by medications, artificial means or "heroic measures". I do, however, ask that medication be mercifully administered to me to alleviate suffering even though this may shorten my remaining life.

This statement is made after careful consideration and is in accordance with my strong convictions and beliefs. I want the wishes and directions here expressed carried out to the extent permitted by law. Insofar as they are not legally enforceable, I hope that those to whom this Will is addressed will regard themselves as morally bound by these provisions.

(Optional specific provisions to be made in this space — see other side)

DURABLE POWER OF ATTORNEY (optional)

I hereby designate _____ to serve as my attorney-in-fact for the purpose of making medical treatment decisions. This power of attorney shall remain effective in the event that I become incompetent or otherwise unable to make such decisions for myself.

Optional Notarization:

"Sworn and subscribed to
before me this _____ day
of _____, 19____"

Signed _____

Date _____

Witness _____

Address _____

Witness _____

Address _____

Notary Public
(seal)

Copies of this request have been given to _____

(Optional) My Living Will is registered with Concern for Dying (No. _____)

TO MY FAMILY, MY PHYSICIAN, MY CLERGYMAN,
MY LAWYER:

If the time comes when I can no longer take part in decisions for my own future, let this statement stand as the testament of my wishes:

If there is no reasonable expectation of my recovery from physical or mental or spiritual disability, I, request that I be allowed to die and not be kept alive by artificial means or heroic measures. Death is as much a reality as birth, growth, maturity and old age--it is the one certainty. I do not fear death as much as I fear the indignity of deterioration, dependence and hopeless pain. I ask that drugs be mercifully administered to me for terminal suffering even if they hasten the moment of death.

This request is made while I am in good health and spirits. Although this document is not legally binding, you who care for me will, I hope, feel morally bound to follow its mandates. I recognize that it places a heavy burden of responsibility upon you, and it is with the intention of sharing that responsibility and of mitigating any feelings of guilt that this statement is made.

Dated:

Witnessed by:

D E C L A R A T I O N

(Suggested text from Virginia Law, 54-325.8:4)

Declaration made this _____ day of _____ (month, year).
I, _____, willfully and voluntarily make known my decision
that my dying shall not be artificially prolonged under the circumstances set forth
below, and do hereby declare:

If at any time I should have a terminal condition and my attending physician
has determined that there can be no recovery from such condition and my death is
imminent, where the application of life-prolonging procedures would serve only to
artificially prolong the dying process, I direct that such procedures be withheld
or withdrawn, and that I be permitted to die naturally with only the administration
of medication or the performance of any medical procedure deemed necessary to
provide me with comfort care or to alleviate pain.

In the absence of my ability to give directions regarding the use of such
life-prolonging procedures, it is my intention that this declaration shall be
honored by my family and physician as the final expression of my legal right to
refuse medical or surgical treatment and accept the final consequences of such
refusal.

(Optional) I hereby designate _____ to make treatment
decisions for me in the event I am comatose or otherwise unable to make such
decisions for myself.

I understand the full import of this declaration and I am emotionally and
mentally competent to make this declaration.

Signed _____

The declarant is known to me and I believe him or her to be of sound mind.

(Notarial Acknowledgement, Optional)

Witness _____

Witness _____

APPENDIX J

EXECUTOR'S CHECKLIST

Stage 1--Preprobate Tasks

1. Provide physician with accurate information for death certificate--request at least 6 copies from funeral director or state bureau of vital statistics.
2. Arrange for security at homes of decedent and close relatives.
3. Meet with decedent's family/heirs; offer assistance, information; obtain psychotherapeutic aid if needed.
4. Discuss and make decisions on donation of body organs with close family members.
5. Ascertain who has right to make funeral arrangements; render assistance (notify clergy if not already informed).
6. Obtain deed to cemetery plot.
7. Help family prepare obituary.
8. Provide care for minors/family members unable to care for themselves.
9. Provide immediate care/security for plants/pets/business and personal assets (especially perishables) and documents.
10. Determine cash needs of immediate survivors and adequacy and sources of cash to meet demands.
11. Tell all friends and family members to give you receipts for funeral-related expenditures.
12. Arrange for decedent's mail to be held at post office until your formal appointment; then arrange for forwarding. Stop newspapers and other deliveries if appropriate.
13. Notify bank--if named as executor or trustee--of death and request immediate appointment of administration officer.

Stage 2--Obtaining "Letters"

1. Locate and examine will.* Advise spouse of right to obtain own attorney and elect against will.
2. Select and meet with attorney to represent estate.

3. Estimate decedent's assets/liabilities.
4. Prepare petition for "letters" (out-of-state property may require ancillary administration as well).
5. Probate will at Register of Wills office and order "short certificates."
6. If necessary, arrange for bond with surety. Ascertain if special procedure for small estates is available and/or if estate can be settled by family agreements.

Stage 3--Assembling and Converting Assets

1. Call property casualty insurance agent(s) and have all coverage checked for adequacy. Obtain confirmation in writing.
2. Call life insurance agent:
 - (a) Have health and life insurance on survivors reviewed;
 - (b) Request claim forms for proceeds on decedent's life (request IRS Form 712) and health/accident claims.
3. Contact bank for opening of safe-deposit box. Open new box for estate.
4. Redraft wills of survivors.
5. List all assets/liabilities. Examine checks, tax returns, insurance policies.
6. Locate and take control of all decedent's property.
7. Arrange for appraisal of personal property.
8. Arrange for appraisal of real estate.
9. Sell or dispose of all perishables.
10. Analyze and review securities. Put idle funds into money markets or CDs.
11. Notify Social Security/V.A. and county and begin to process forms for obtaining benefits.
12. Contact employer and request unpaid salary/bonus/vacation pay/pensions/other death-related benefits.

13. Advertise grant of letters.
14. Notify local banks of decedent's death. Request information on accounts/safe-deposit box.
15. Transfer all cash to new checking account in estate's name. Set up accounting and control system and apply for employer identification number from IRS.
16. Obtain all stocks/bonds. Close brokerage accounts. Collect any interest/dividends. Sell securities to extent necessary/appropriate. Place balance in name of executor.
17. Inspect all real estate. Arrange for security, management/payment of taxes, collection of rents.
18. Put all jewelry/furs/art/other valuable personal effects into safe-deposit box or similar protected storage.
19. Proceed with, adjust and settle claims/lawsuits.
20. Check will/letter of instructions and consult decedent's heirs and attorney with respect to business continuation. Arrange for immediate supervision and management. Decide on sale/liquidation/continuance.

Stage 4--Filing and Payments of Taxes, ** Debts and Expenses

1. Request family exemption from state death tax if appropriate. Obtain exemption certificates for charitable gifts.
2. File state and federal income tax returns for (a) period before death and (b) period after death.
3. File federal estate tax return if necessary and pay tax due.
4. File state death tax return(s) (including other states) and pay tax due.
5. Pay personal or real property taxes due.
6. Pay bills, loans, etc.
7. Pay appraiser's/accountant's/lawyer's/personal representative's fees and court costs.

Stage 5--Distribution

1. Prepare and file accounting of receipts/disbursements/schedule of distribution.

2. Notify unpaid creditors and beneficiaries of filing of account and time and date of audit.
3. Notify attorney general of state if charitable gifts are involved.
4. Establish testamentary trusts.
5. Transfer securities and other assets in accordance with court-approved distribution schedule (obtain receipt and release).
6. Petition for surety's discharge.

APPENDIX K

STATE DEATH AND GIFT TAXES

<u>State</u>	<u>Inheritance and Pick-Up</u>	<u>Estate and Pick-Up</u>	<u>Pick-Up Only*</u>	<u>Gift</u>
Alabama			X	
Alaska			X	
Arizona			X	
Arkansas			X	
California			X	
Colorado			X	
Connecticut	X			
Delaware	X			X
Florida			X	
Georgia			X	
Hawaii			X	
Idaho	X*			
Illinois			X	
Indiana	X*			
Iowa ¹				
Kansas	X*			
Kentucky	X			
Louisiana	X		X	
Maine	X ³			
Maryland	X			

* Transfers to spouses are exempt.

1 Iowa: Tax on transfers to surviving spouses was phased out by January 1, 1988.

2 Maine: Inheritance tax as phased out.

3 Minnesota: The estate tax is repealed, effective January 1, 1986.

4 Oregon: The estate and gift tax was phased out on January 1, 1987.

5 Rhode Island: The estate tax will be phased out by January 1, 1991.

<u>State</u>	<u>Inheritance and Pick-Up</u>	<u>Estate and Pick-Up</u>	<u>Pick-Up Only*</u>	<u>Gift</u>
Massachusetts		X		
Michigan	X			
Minnesota		X ³		
Mississippi				
Missouri			X	
Montana	X*			
Nebraska	X*			
Nevada			X	
New Hampshire	X*			
New Jersey	X*			
New Mexico			X	
New York		X		X*
North Carolina	X			X
North Dakota			X	
Ohio		X		
Oklahoma		X*		
Oregon		X ⁴		X ³
Pennsylvania	X			
Rhode Island		X ⁵		
South Carolina		X		X*
South Dakota	X*			
Tennessee	X			X
Texas			X	
Utah			X	
Vermont			X	
Virginia			X	
Washington			X	
West Virginia			X	
Wisconsin	X*			X*
Wyoming			X	
D.C.	X			

Estate Tax: Tax imposed on the entire estate.

Inheritance Tax: Tax imposed separately on individual bequests, the rate of tax being progressive depending on the size of the gift and not on the size of the total estate.

Pick-Up Tax: Tax designed by the state to obtain the maximum amount allowed as a credit for state death taxes under I.R.C. § 2011.

UNIFORM ACTS CONCERNING GIFTS AND TRANSFERS TO MINORS

State	UGMA*	Rev. UGMA	UTMA**	Other	Provides for Testamentary Gifts
AL			X		X
AK		X			
AR			X		X
AZ			X		X
CA			X		X
CO		X			X
CT		X			X
DE		X			X
DC			X		X
FL			X		X
GA		X			
GUAM			X		
HI			X		X
ID			X		X
IL			X		X
IN			X		X
IO			X		X
KS			X		X
KY			X		X
LA			X		X
MAINE			X		X
MD			X		X
MASS			X		X
MICH	X				
MN			X		X
MISS		X			
MO			X		X
MONT			X		X
NEB		X			
NEV			X		X
NH			X		X
NJ		X			X
NM			X		X
NY		X			X
NC			X		X
ND			X		X
OH			X		X
OK			X		X
OR			X		X
PA		X			X

State	UGMA*	Rev. UGMA	UTMA**	Other	Provides for Testamentary Gifts
PR					
RI			X		X
SC		X			X
SD			X		X
TEN		X			
TX		X			X
UT	X				X
VT		X			
VI	X				
VA			X		X
WA		X			X
WV			X		X
WIS			X		X
WY			X		
54	3	15	35		43

* Uniform Gifts to Minors Act.

** Uniform Transfers to Minors Act.

APPENDIX M

GLOSSARY

Ascendant. Persons with whom one is related in an ascending line, such as parents, grandparents, and great-grandparents.

Administrator or Administratrix. An administrator is a man or corporation and an administratrix is a woman appointed by the court to distribute property and pay debts of a person who has died intestate.

Attestation. Act of witnessing a will or instrument in writing at the request of the party making the same, and subscribing it as a witness.

Bequest. A testamentary disposition of personal property.

Choice of Law: Determination of what law governs the validity of a will. Most states have enacted a choice of law statute.

Closed will. A written will signed by testator in sealed form, contents of which are not disclosed to attesting witnesses. See, Puerto Rico.

Codicil. A written supplement or addition to a will executed with all formalities of a will. A will and codicil taken together form a single instrument.

Collateral kindred. Persons who descend from one and the same common ancestor, but not from one another.

Community property. Property in which a husband and wife have a one-half interest by operation of law.

Community property jurisdictions. Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington.

Consanguinity. Blood relationship or kinship.

Curtesy. A husband's right or share of real property owned by his wife during marriage.

Decedent. A deceased person. Term commonly used to describe testator or person who dies intestate.

Degrees of kinship. The distance in steps which separate two persons who are related by consanguinity.

Descendant. A person who proceeds directly from the person of another; person in the blood line of the decedent.

Descent. Hereditary succession.

Devise. A testamentary disposition of real property.

Distribution. The apportionment of the remainder of the estate after payment of debts and charges among those entitled under law of intestacy.

Dower. A wife's right or share of real estate owned by her husband during marriage. Also used to describe widower's share in some jurisdictions.

Election. The right of a surviving spouse to elect to receive either the provisions made in the will of a deceased spouse or the share to which he or she would have been entitled had there been no will.

Execution. The completion or fulfillment of the formal requirements necessary to establish a valid will.

Fiduciary. Broad term encompassing executors, administrators, guardians and conservators. Generally, anyone having a duty to act primarily for another's benefit.

Formal writing. A written declaration of revocation executed in compliance with formalities necessary for the creation of a valid will.

Guardian. Person charged with duty of taking care of another or managing the property of another.

Holographic will. A will written entirely in the hand of testator and usually signed and dated in a like manner.

Interested witness. Subscribing witness to a will to whom a beneficial devise or bequest is made.

Intestate. Term describing condition of estate when one dies without a will.

Legacy. A testamentary disposition of personal property. See, bequest.

Nuncupative will. An oral will.

Personal representative. Categorical heading for executor or administrator of estate.

Physical destruction. Method of revoking will by burning, tearing, cancelling or obliterating it with the intent to revoke by the testator or someone in his presence and by his direction.

Pretermitted heir. A child or other descendant omitted by a testator. Where testator unintentionally fails to mention a child in his will or make provision for a child born after will is executed, a statute may provide that the child shall share in the estate as though the testator had died intestate.

Self-Proving Provision. A clause in the will which provides that at the time of execution the testator willingly signed his last will and was of legal age and sound mind. The clause is signed by the testator and witnesses under oath and notarized. In many states the use of a self-proving provision eliminates the need for the witnesses to appear at the probate proceedings.

Separate property. Property not jointly held by husband and wife in a community property state. Upon death of spouse intestate, separate property is distributed according to statutory scheme operative in jurisdiction.

Subscription. The act of writing one's name on a written instrument for the purposes of attestation.

Testator or Testatrix. A man who executes a will is known as a testator. A woman who executes a will is known as a testatrix.

Testamentary capacity. Testator must have mind and memory enough to understand the activity in which he is engaged. Old age, bodily infirmity and impaired mind do not vitiate a will made by one having such capacity.

Usufruct. The right to enjoy a thing, the title to which is vested in another, and to draw from the same all profit, utility and advantage which it may produce.